

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

T.R., Appellant)	
)	
and)	Docket No. 08-841
)	Issued: September 8, 2008
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD Bremerton, WA,)	
Employer)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Howard L. Graham, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 4, 2008 appellant filed a timely appeal from a November 2, 2007 merit decision of the Office of Workers' Compensation Programs denying his emotional condition claim. Under 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 sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 20, 2007 appellant, then a 47-year-old voucher examiner, filed an occupational disease claim alleging that he developed stress and anxiety due to factors of his federal employment. He indicated that his light-duty position with the travel office was stressful as he did not have sufficient training to carry out his daily duties. Appellant became aware of his

condition on December 7, 2003 and realized it was caused or aggravated by his work on July 24, 2004. He was terminated for cause on May 3, 2004.

In support of his claim, appellant submitted a page from a position description from Forge Die Company; a photocopy of his attorney's business card; Standard Forms SF-50's from 2003 and 2004; application for federal employment; and employee position history. In a March 12 and April 21, 2007 medical statement Dr. J. Daniel Wanwig, a psychiatrist, diagnosed acute paranoid psychosis which he attributed to appellant's employment.

In a May 8, 2007 e-mail, Louis Fattrusso of the employing establishment advised that appellant was medically placed in the position of voucher examiner in May 2002 and was competitively promoted in May 2003. He stated that appellant was trained and competent in his work at both levels. However, appellant was administratively removed on May 3, 2004 for misuse of a government credit card, failure to timely pay off debt on a government credit card and failure to report to work and/or contact his supervisor.

By letter dated June 4, 2007, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence.

In statements dated August 3, 2006 to June 21, 2007, as well as in a June 21, 2007 statement from his attorney, appellant described his emotional condition and employment. He advised that he was working off station in Florida from April to December 2003. When appellant returned to the employing establishment, a new computer program had been implemented to perform 80 percent of the travel coordinator position. He was required to work at the new program without formal training and was constantly interrupting his coworkers and became an annoyance to them. Appellant requested formal training but his supervisor advised that there would not be any. He became behind in his workload because he did not understand and could not learn the new system on his own, although he tried his best. Appellant indicated that this situation caused him extreme anxiety and, with the pressure from employees who needed help with their travel vouchers, was constantly in a stressful work environment. He advised that he had trouble sleeping because he worried about his job. Appellant noted asking for counseling because he was having problems due to not keeping up with his assignments. The employing establishment did not offer him any help, give him sick leave or provide him with a leave of absence. He stated that there had been minimal computer work prior to the implementation of the new computer program. Appellant experienced pain in his wrists and numbness in his hands due to the amount of typing involved which made it harder for him to concentrate on his job.¹

Appellant stated that his termination increased his stress and anxiety levels. He disagreed with his termination, for misuse of a government credit card, noting that he had mistakenly used the government card to make a cash withdrawal on March 10, 2004. As soon as appellant realized his mistake, he contacted his supervisor and paid the total balance on March 19, 2004. He became aware that a late fee had been charged to his government card from a previous transaction on March 19, 2004. Appellant contended that the employing establishment had singled him out as he knew of others who abused their government cards for personal needs but

¹ Appellant advised that he had an accepted carpal tunnel condition under claim number 03-58038.

were not terminated. He also disagreed with the employing establishment's allegation that he failed to report to work and contact a supervisor. Appellant stated that Shelia Williams, his supervisor, knew about his medical problems as his wife had called several times in January and February to explain his absences and why he was unable to return to work. He also alleged that his physical limitations due to carpal tunnel syndrome played a significant role in his inability to perform the new travel program. He alleged that the new travel program was outside his restrictions and the employing establishment used his physical limitations as a reason for the termination. Appellant's attorney argued that learning a new computer system and not being able to handle the daily work load were factors of employment contributing to appellant's condition.

Appellant submitted a report of physical limitations notifications of personnel actions and materials relating to his May 3, 2004 removal, including a March 25, 2007 notice of proposed adverse action and an April 27, 2007 letter of removal notification. The reasons provided for appellant's removal were: misuse of government travel card; failure to timely pay debt on government credit card; and failure to report to work and/or contact supervisor. Also submitted were medical reports from Dr. Wanwig, Dr. Taehee Kim, a Board-certified internist, and Dr. William S. Kelly, a Board-certified psychiatrist.

In a June 29, 2007 statement, Ms. Williams advised that, although she had received doctor's notes indicating that appellant had a medical condition, she was appraised that he could return to work. However, appellant did not show up as scheduled and there was little communication to explain his absence. Ms. Williams advised that the amount of physical keyboarding remained the same as before the new financial application was installed. She noted that any alleged credit card abuse by appellant's coworkers was unsubstantiated. In an August 5, 2007 statement, Ms. Williams stated that all voucher examiners, including appellant, were sent to a four-day training program on the Joint Travel Regulations. With regard to the new travel program implemented October 3, 2003, she indicated that the only change was a behind the scenes financial interface, which was invisible to the user. Ms. Williams advised that travel personnel were required to login at a new website and establish a new password, but the function, rules and logic had not changed from the previous application. People having questions or difficulty with logging in were helped by the lead on the conversion, as on-the-job training. She stated that there was no need for formal training on this converted application and no one received such.

In an August 3, 2007 statement, Mr. Fattrusso indicated that appellant had received training from USDA. He indicated that all other training was informal and hands on as the function had not changed.

In a September 11, 2007 statement, William F. Saurer of the employing establishment stated that appellant was provided the same training as the rest of the travel office, which was basically on-the-job training. He advised that the system had never changed from what it was before appellant left and the only difference was the cost program running in the background. Mr. Saurer stated that everyone was told to go to the training portion of the program and play around with it to ensure that it worked appropriately.

By decision dated November 2, 2007, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors.

LEGAL PRECEDENT

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 employment but nevertheless does not come within the concept or coverage of workers compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.² 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 reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.³

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁴ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁵

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee 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. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are

² *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*

⁴ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁵ *Kim Nguyen*, 53 ECAB 127 (2001).

⁶ *James E. Norris*, 52 ECAB 93 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

deemed compensable 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.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

ANALYSIS

The issue is whether appellant has substantiated any compensable work factors.

Administrative and personnel matters include matters involving the training and discipline of employees⁹ and are not compensable unless the employee shows that management acted unreasonably.¹⁰ Appellant alleged that he was the only person in the travel office who did not receive training in the new computer program and, as a result, he could not keep up with his assignments and had mental problems due to stress. The evidence reflects that appellant had been trained and was competent in his work as a voucher examiner and had attended a four-day training program. With regard to the new travel program implemented in October 2003, the evidence reflects it ran in the background, invisible to the user, and had the same function, rules and logic as the previous application. The only difference appeared to be logging in at a new website and establishing a password. No one received formal training on the new application, but rather were instructed to use the training portion of the program. Additionally, help was provided by the lead on the conversion for those employees having questions or difficulty with logging in. The record contains no showing of error or abuse by the employing establishment with regards to either appellant's official training in his work as a voucher examiner or in its on-the-job training of the new travel program implemented in October 2003. Thus, appellant has not established that a compensable factor is not established in that regard.

Appellant generally claimed he was unable to keep up with his assignments because he could not learn the new computer program. To the extent that appellant is alleging he had an emotional reaction to his workload, he did not provide a detailed allegation or supporting evidence.¹¹ Therefore, appellant has not established a compensable factor of employment with respect to this matter.

Appellant alleged that he had stress in carrying out the duties of his position as the new computer program constituted 80 percent of his work. While there is no evidence as to the exact percentage the new computer program was utilized in appellant's daily work, there is no dispute

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

⁹ *James E. Norris*, *supra* note 6.

¹⁰ *Janice I. Moore*, 53 ECAB 777 (2002).

¹¹ *See Sherry L. McFall*, 51 ECAB 436 (2000).

that it was used in his work and that he attributed his stress to performing using the new program. Under *Cutler*, where the disability results from a claimant's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Act.¹² Given that these duties were part of his regular and specially-assigned duties, the Board finds that appellant has established a compensable employment factor.

Appellant also alleged that he was wrongfully terminated by the employing establishment. The record indicates appellant was removed because he: misused the government travel card; failed to timely pay debt on the government travel card; and failed to report to work and/or contact his supervisor. While appellant took issue with each of the reasons for his termination, the evidence does not establish error or abuse in this administrative action. Appellant's supervisor explained the actions of the employing establishment and there is no evidence of error or abuse of record before the Board.

With regard to his termination, appellant generally alleged that he was harassed at the employing establishment. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.¹⁴ In this case, appellant did not provide any witness statement or independent evidence to establish his allegations of being improperly singled out by the employing establishment for misuse of the government card.¹⁵ He therefore failed to establish a factual basis for his claim of harassment and retaliation by probative and reliable evidence.¹⁶ Accordingly, the record is not sufficient to establish harassment but constitutes appellant's perception that he was harassed. As appellant did not establish as factual a basis for his allegation of harassment, he did not establish that harassment and/or discrimination occurred. The evidence instead suggests that the employee's feelings were self-generated and thus not compensable under the Act.¹⁷

With respect to appellant's allegation that the employing establishment terminated him as a result of his physical limitations, there is no evidence to support this allegation. The Board however has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.¹⁸ The record

¹² See *Lillian Cutler*, *supra* note 2. See also *Tina D. Francis*, 56 ECAB 180 (2004) (where the claimant alleged that stress related to her regular supervisory duties and to specially-assigned duties associated with complaint investigations caused her emotional condition, the Board found that she had established compensable employment factors).

¹³ *James E. Norris*, *supra* note 6.

¹⁴ *Id.*

¹⁵ See *Mary J. Summers*, 55 ECAB 730 (2004).

¹⁶ *Id.*

¹⁷ See *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁸ *Robert W. Johns*, 51 ECAB 137 (1999).

indicates that appellant worked in a light-duty position at the travel office. To the extent that the employing establishment was aware of appellant's physical restrictions, there is no indication in the record to substantiate his allegation that his restrictions had changed to the extent that he could no longer perform the requirements of his light-duty position. Appellant's supervisor specifically stated that the amount of physical keying remained the same after the new computer program was installed. Therefore, appellant has not established a compensable factor of employment with respect to this factor.

As appellant has established a compensable work factor in this case, the Office must base its decision on an analysis of the medical evidence. The case will be remanded to the Office for that purpose.

CONCLUSION

The Board finds that appellant has established a compensable employment factor under *Cutler*. The case will be remanded to the Office to analyze the medical evidence and to determine whether he sustained an emotional condition due to the accepted employment factor.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 2, 2007 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: September 8, 2008
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board