

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD A. DALY and DEPARTMENT OF THE AIR FORCE,  
McCLELLAN AIR FORCE BASE, CA

*Docket No. 97-2007; Submitted on the Record;  
Issued February 11, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

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

On August 12, 1996 appellant, a 43-year-old machinist, filed a CA-2 claim for occupational disease, claiming he sustained an emotional condition caused by factors of his federal employment, which he first became aware of in July 1992. He alleged that he had been subjected to numerous unfair labor practices, such as poor management, denial of promotions and threats of future job loss caused by the closing of the military base where he worked. Appellant stated that he began experiencing mental anguish, mental fatigue, nervous anxiety and neurological damage. He submitted a statement dated October 21, 1996 in which he made allegations regarding the employing establishment and some of his coworkers, including verbal harassment, unwarranted threats of leave without pay, insufficient training for new and technically complex positions and an atmosphere of rumor-mongering and backstabbing.

In support of his claim, appellant submitted a September 4, 1996 report from Dr. Vincent D. Licata, a Board-certified family practitioner, who stated that appellant had a history of nocturnal seizures, although he had stayed generally healthy except for intermittent difficulties in the past with depression, for which he had received treatment in 1989. He advised that, although appellant was placed on anti-depression medication in January 1995, his depressive symptomatology had grown increasingly severe during the past year and he had consulted a psychiatrist for treatment of depression in January 1996. Dr. Licata stated that appellant exhibited suicidal ideation when he examined him in April 1996. He diagnosed appellant as having a depressive disorder, agitated type and placed him on medication. Dr. Licata advised that appellant had been extremely agitated in his office on more than one occasion, and therefore lacked the mental and emotional stability required by his job. He concluded that appellant's mental condition made it inappropriate for him to be working at his previous job in the foreseeable future.

By decision dated March 3, 1997, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty. The Office stated that the following events alleged by appellant were found to have occurred, but were not compensable factors of employment: (1) The employing establishment closed during September 1996, although it would require a few more years for the base to actually terminate all operations. Although appellant was currently working, he was expected to eventually lose his job when the based completely shut down its operations; (2) The base eliminated the position of wage grade level-9 machine tools operator, in which appellant had been employed for several years, during 1990 to 1991. For the next few years appellant was moved to a few different positions, all machine tool related.

The Office did not accept the following allegations made by appellant because they were factually uncorroborated: (1) Appellant attributed his condition to the horrible attitudes and poor management abilities of his supervisors and management personnel; (2) Appellant stated that he had not been promoted to a wage grade level-10 (WG-10) because management was prejudiced against him; (3) Appellant alleged that there was an ongoing "war" between employees and management; (4) Appellant's supervisor yelled at him and told him that he would be placed in a leave without pay status if he left work; (5) During a meeting, appellant asked another supervisor, "Is this where the WG-9's will be promoted to WG-10's, the supervisor allegedly replied, "No, this is where you get shot!"; (6) Appellant was not able to learn how to use newer, "high-tech" machines; (7) Appellant claims he was "invalidated" by the chain of command. He also stated that during his 19 years at work that rumors spread that he is not any good, not smart enough, and does not need to know anything; (8) Appellant stated that he was not trained to use computers or the machinery used in new machine shop; (9) He stated that there are constant threats regarding production levels.

The Office found that although two of the events listed above were accepted as factual, they were not considered to be in the performance of duty because they were purely administrative actions. Specifically, the Office found that neither appellant's reaction to the impending base closure nor his position reassignment were factors of employment, as the record contained no evidence indicating that the employing establishment acted unreasonably in the administration of this personnel matter or abused its discretion. The Office rejected appellant's allegation that he lacked training for his new position in the machine shop, which was similar to his prior machinist position, and found that there was no evidence, other than appellant's allegations, that special training was required for his new position. The Office further found that the remainder of appellant's allegations that he was mistreated, harassed or verbally abused by his supervisors could not be accepted as factual, because he failed to submit probative factual evidence to support these allegations.

In a letter received by the Office on April 7, 1997, appellant requested reconsideration. Accompanying his request was a March 29, 1997 report from Dr. M. Rynda Norsell, a Ph.D. She stated:

"[Appellant] has been seen regularly in psychological treatment from August 15, 1996, through the present for emotional sequelae arising from work experiences at [the employing establishment]. Those experiences included assignment to the

sheet metal shop in 1991 and 1992 for which he thought he was unsuited and unqualified, and lack of promotion during the 12 years he worked at the base.... Although he continues to work, the stress has taken a significant toll mentally and emotionally. He frequently misses work because of emotional distress and has become unable to function normally in his personal life. I believe he should be considered a candidate for disability.”

The record also contains a December 13, 1996 treatment note from Dr. Licata, which stated that appellant was released to work on that date.

Appellant also submitted a March 14, 1997 statement from a coworker who asserted that he witnessed and overheard the April 1996 incident where appellant’s supervisor stated, in response to appellant asking if this was where the employees got the WG-10’s, the supervisor replied, “No, this is where you get shot!” In addition, appellant submitted a March 16, 1997 letter from a union steward, which supported his allegation that he had been unfairly denied promotions.

By decision dated May 9, 1997, the Office found that appellant submitted evidence sufficient to modify the March 3, 1997 decision and cited a compensable factor of employment, *i.e.*, the April 1996 verbal insult from his supervisor, but that he did not submit medical evidence sufficient to establish that he had an emotional condition caused or aggravated by his federal employment.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>1</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>2</sup>

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>3</sup> On the other hand, disability is not covered where it results from an employee’s fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee’s feeling of job insecurity

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<sup>1</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>2</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>4</sup> Perceptions and feelings, alone, are not compensable. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.<sup>5</sup>

In the present case, the Office found that the allegations made by appellant concerning work-related threats of firing, leave without pay and abusive language on the part of appellant's frontline supervisor, other than the one episode in April 1996, were not established as factual by the weight of the evidence of record. The Office reviewed all of appellant's specific allegations of harassment, abuse and mistreatment, and found that they were not substantiated or corroborated. In addition, appellant failed to establish that his supervisor threatened or verbally abused appellant or otherwise ridiculed him during the periods and dates he alleged these episodes to have occurred. Nor has appellant provided factual support for his allegations that his supervisors created a hostile work environment.<sup>6</sup>

The Board finds that appellant failed to substantiate his allegations of harassment. Appellant has not submitted any factual evidence to support his allegations that he was harassed, mistreated, or treated in a discriminatory manner by his supervisors. The Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as he failed to provide any corroborating evidence for his allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support his claim for an emotional disability.<sup>7</sup> For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Board further finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error, and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>8</sup> In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the closing of the base or the elimination of the WG-9 machine tools operator position, both of which involved personnel matters on the part of the employing establishment. Accordingly, the Office properly found that neither of these episodes constituted a factor of employment. Further, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment; neither does

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

<sup>7</sup> See *Debbie J. Hobbs*, *supra* note 1.

<sup>8</sup> *Alfred Arts*, 45 ECAB 530 (1994).

the monitoring of work by a supervisor.<sup>9</sup> Thus, appellant has not established a compensable employment factor under the Act with regard to these administrative matters.

Finally, appellant indicated that he became emotionally distraught by being passed over for promotions in the 12 years he worked at the employing establishment. This matter is also not compensable, as determinations by the employing establishment concerning promotions and the work environment are administrative in nature and not a duty of the employee.<sup>10</sup> Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of agency error such personnel matters were not compensable factors of employment.

The Board notes that the Office found that appellant established a compensable factor of employment, the April 1996 verbal altercation with his supervisor. As this allegation of verbal abuse was corroborated by a coworker who witnessed the incident and substantiated by the evidence of record, it constitutes a compensable factor of employment

However, appellant's burden of proof is not discharged by the fact that he has identified an employment factor which may give rise to a compensable disability under the Act. Appellant also has the burden of submitting sufficient medical evidence to support his claim that this factor caused or contributed to an employment-related emotional condition.<sup>11</sup> In the instant case, appellant has submitted medical evidence in the present case consisting of Dr. Licata's September 4, 1996 report and December 13, 1996 treatment note, and Dr. Norsell's March 29, 1997 report. Dr. Licata noted appellant's history of nocturnal seizures and depression, for which he had been prescribed medication, diagnosed depressive disorder and advised that his depressive symptomatology had been increasing in its severity. He did not, however, opine that appellant's emotional or psychiatric problems were caused or aggravated by any factor of his federal employment. Dr. Norsell stated that she had been treating appellant for emotional sequelae arising from work experiences, but specified that these work experiences included his assignment to the sheet metal shop in 1991 and 1992 and the lack of promotion during the 12 years he worked at the employing establishment. She did not, therefore, attribute any symptomatology to the accepted factor of employment. Thus, appellant has failed to meet his burden of submitting sufficient medical evidence to support his claim that a factor of his federal employment resulted in an employment-related emotional condition.<sup>12</sup>

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<sup>9</sup> See *Janet I. Jones*, 47 ECAB 345 (1996).

<sup>10</sup> See *Merritt J. Kauffman*, *supra* note 6; *William P. George*, 43 ECAB 1159 (1994).

<sup>11</sup> *Chester R. Henderson*, 42 ECAB 352 (1991).

<sup>12</sup> *Id.*

The decisions of the Office of Workers' Compensation Programs dated May 9 and March 3, 1997 are hereby affirmed,

Dated, Washington, D.C.  
February 11, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member