U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD W. DUNCAN and U.S. POSTAL SERVICE, POST OFFICE, Salt Lake City, Utah

Docket No. 95-2080; Submitted on the Record; Issued May 19, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

Appellant filed a notice of occupational disease on October 24, 1988 alleging that he developed atypical depression due to factors of his federal employment. By decision dated April 14, 1989, the Office of Workers' Compensation Programs denied appellant's claim. Appellant requested reconsideration on December 7, 1990. The Office denied modification on January 16, 1991. Appellant again requested reconsideration on January 6, 1992. The Office refused to reopen appellant's claim for review of the merits on February 2, 1992. Appellant requested review by the Board and by decision dated January 12, 1993, the Board remanded the case for the Office to conduct a review of the merits.[1] The Office denied appellant's claim on April 6, 1993 finding that he had not established a factor of employment. Appellant requested reconsideration on October 28, 1993 and the Office denied this request on January 18, 1994. Appellant requested reconsideration on April 5, 1994. By decision dated February 3, 1995, the Office denied modification of its prior decisions.

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

[1] Docket No. 92-971 (issued January 12, 1993).

factors are causally related to his emotional condition.[2] 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.[3]

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 a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.[4]

Appellant attributed his emotional condition to several administrative and personnel matters undertaken by the employing establishment. These included leave denial and calculation,[5] scheduling,[6] discipline, such as letters of warning and discussions,[7] investigation by postal inspectors[8] and, the cancellation of an employing establishment parking sticker, as well as fitness-for-duty examinations on June 4, 1986 and September 30, 1988.[9]

The Board has held that such actions of the employing establishment in general are not considered compensable factors of employment because they relate to administrative or personnel matters. 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.[10] In this case, appellant has submitted no evidence

[2] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[3] *Id.*

[4] *Lillian Cutler,* 28 ECAB 125, 129-31 (1976).

[5] *Elizabeth Pinero,* 46 ECAB 123, 130 (1994).

[6] *Mary A. Sisneros,* 46 ECAB 155, 162-63 (1994).

[7] *Gregory N. Waite,* 46 ECAB 662, 673 (1995).

[8] *Ruth S. Johnson,* 46 ECAB 237, 241 (1994).

[9] *Donald E. Ewals,* 45 ECAB 111, 124 (1993).

[10] *Martha L. Watson,* 46 ECAB 407 (1995).

establishing that the employing establishment acted unreasonably in the above mentioned administrative or personnel matters.

Appellant also attributed his emotional condition to additional administrative actions including a proposed removal, which was reduced to a letter of warning and an October 1982 step increase denial which was grieved and granted. The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.[11] Appellant attributed his emotional condition to a threat that he would be fired for reading the mail. Supervisor Steven Harvey stated that appellant was flipping through a magazine and that he informed appellant that if he was found reading mail again he would be fired. In a statement dated August 8, 1989, Mr. C. Averitte, a coworker, stated that appellant was demonstrating how to place mail in the correct slot. However, there is no evidence that the employing establishment acted unreasonably in warning appellant of the consequences of reading the mail. Appellant has submitted no evidence that the employing establishment committed error or abuse in issuing these disciplinary actions.

Appellant attributed his emotional condition to the denial of overtime. The Board has held that the appellant's desire for overtime work does not arise as a compensable factor of employment.[12] Appellant also alleged that the employing establishment did not provide him with a medical referral and that the employing establishment interfered with his claim for compensation and medical treatment. The Board has held that the processing of a compensation claim bears no relation to the duties that the employee is hired to perform and does not arise in the performance of duty.[13]

Appellant attributed his emotional condition to harassment and discrimination by his supervisors. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination 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. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[14]

Appellant alleged that supervisors harassed him regarding such activities as talking to coworkers, as well as water and bathroom breaks. Appellant alleged that the employing establishment retaliated against him for ending smoking on the work floor. He stated that Mr. Wilfred W. Valdez, a supervisor, called him while he was in the bathroom. Mr. Valdez stated that he did call appellant while appellant was in the locker room as the postal inspector wished to talk to appellant. Appellant has submitted no evidence substantiating that these events constituted harassment.

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[11] *Mary L. Brooks,* 46 ECAB 266, 274 (1994).

[12] *Peggy R. Lee,* 46 ECAB 527, 534 (1995).

[13] *Joseph G. Cutrufello,* 46 ECAB 285, 294 (1994).

[14] *Alice M. Washington*, 46 ECAB 382 (1994).

Appellant submitted a statement from Brian L. Nichols, a coworker, noting that appellant's performance was constantly criticized, that appellant was required to work beyond his restrictions and that he never heard appellant threatening anyone. This statement is general in nature and does not refer to any specific incidents that would substantiate appellant's allegations that he was harassed by his supervisors.[15]

Appellant alleged that he received disciplinary actions taken to make him look like a bad employee. In a statement dated April 15, 1994, John L. Oppocher, the local union president, stated that appellant was treated differently from other employees. As an example, he stated that other employees, including himself, were allowed to check in and keep their badge readers with them while appellant was disciplined for this action. The employing establishment stated that employees were not allowed to have their badge readers with them and provided citations to the employing establishment manual. The employing establishment has established that its administrative decision to reprimand appellant was not error or abuse and there are not sufficient facts in the record to establish that Mr. Oppocher was not the exception rather than the rule in escaping discipline.

Appellant alleged that he was expected to work beyond his limitations. Work outside of physical limitations can constitute a compensable factor if substantiated by the record. However, Tom Hilton, a supervisor, indicated that appellant worked within his restrictions and there is no probative evidence establishing that appellant had specific limitations that were not accommodated by the employing establishment. Therefore, appellant has not substantiated his allegations of work outside his restrictions.[16]

Appellant alleged that Mr. Valdez glared at him for minutes at a time while appellant was working. Mr. Valdez responded on October 7, 1994 and stated that he did not stand and glare at employees. He stated that he had a hard looking face. Appellant submitted statements from two coworkers stating that Mr. Valdez would, on occasion, watch the area in which the employees were located. While there is evidence of record showing Mr. Valdez would watch or stare at employees, the Board finds that the evidence is insufficient to establish error or abuse on the supervisor's part in monitoring the work area.

Appellant attributed his emotional condition to his accepted employment injury. The Board has held that an emotional condition related to chronic pain and other limitations resulting from an employment injury is compensable.[17] Therefore, the Board finds that appellant has alleged a compensable factor of employment and will evaluate the medical evidence to determine if appellant has met his burden of proof.

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[15] *Jose L. Gonzalez-Garced*, 46 ECAB 559, 564-65 (1995).

[16] *Diane C. Bernard,* 45 ECAB 223, 227 (1993).

[17] *Clara T. Norga,* 46 ECAB 473, 482 (1995).

On August 8, 1988 Dr. A. Owen Smoot, an orthopedic surgeon, stated appellant had bouts of depression and anxiety related to chronic pain.[18] This report is not sufficient to meet appellant's burden of proof as Dr. Smoot did not provide any medical rationale supporting a causal relationship between appellant's employment and his emotional condition.

In a report dated October 18, 1988, Dr. Breck Lebegue, a Board-certified psychiatrist of professorial rank and an employing establishment physician, diagnosed bipolar disorder. He stated appellant's diagnosed condition was not due to work-related factors.

Dr. Peter Heinbecker, a Board-certified psychiatrist, completed a report on September 16, 1988, diagnosing atypical depression with homicidal ideation. He did not provide an opinion on the causal relationship between appellant's diagnosed condition and his accepted employment factors. Dr. Heinbecker completed a form report on September 19, 1988 and diagnosed atypical depression. He indicated that appellant's condition was not due to his employment and stated that appellant had difficulty tolerating supervision.

In a report dated November 30, 1988, Dr. Heinbecker diagnosed atypical depression with homicidal ideation, a mixed personality disorder with paranoid and dependent features and a prior head injury with an 18-day coma. Dr. Heinbecker stated, "I do not personally feel that the patient's illness has been caused by his employment, but I think it has been aggravated by his employment." He attributed appellant's condition to his previous head and back injury. This report is not sufficient to meet appellant's burden of proof as Dr. Heinbecker did not provide medical rationale explaining how or why appellant's emotional condition had been aggravated by his accepted employment injury.

In a report dated June 18, 1989, Dr. Heinbecker listed several alleged employment incidents, but failed to describe the compensable employment incidents and failed to provide an opinion on causal relationship. On March 22, 1990 he stated that appellant's most significant problems were caused by his treatment by his supervisors at work. In a report dated June 6, 1990, Dr. Heinbecker attributed appellant's emotional condition to actions by the employing establishment. However, he failed to list the compensable factors of employment. Dr. Heinbecker completed a report on August 22, 1990 and stated that he disagreed with Dr. Lebegue's diagnosis of bipolar disorder. On September 19, 1990 Dr. Heinbecker attributed appellant's condition of anger and depression to the relationship between appellant and his supervisors. He did not provide a description of the accepted factors of employment. In a form report dated November 25, 1991, Dr. Heinbecker diagnosed post-traumatic stress disorder and indicated with a checkmark "yes" that appellant's condition was caused by his employment. Dr. Heinbecker explained, "Treatment at [employing establishment] has caused a post-traumatic stress disorder, which will continue indefinitely." This report does not provide the necessary listing of accepted employment factors nor does it include medical rationale explaining the change in diagnosis and the causal relationship between this condition and appellant's employment. Dr. Heinbecker's reports are not sufficient to meet appellant's burden of proof as

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[18] Appellant also submitted reports from Lynn D. Johnson, a psychologist. The record does not indicate that Ms. Johnson is a clinical psychologist, therefore, her reports did not constitute medical evidence and are not sufficient to meet appellant's burden of proof. 5 U.S.C. § 8101(2); *Arnold A. Alley,* 44 ECAB 912 (1993).

there are conflicting diagnoses, conflicting opinion on the causal relationship between accepted factors and appellant's condition and a lack of medical reasoning explaining how he reached his diagnoses and opinion on causal relationship.

As appellant has failed to submit sufficient medical evidence to establish a causal relationship between his diagnosed condition and his accepted employment factors, he has failed to meet his burden of proof.

The decision of the Office of Workers' Compensation Programs dated February 3, 1995 is hereby affirmed.

Dated, Washington, D.C.
May 19, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member