U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENN M. BARBER and U.S. POSTAL SERVICE,
POST OFFICE, Roanoke, Va.

Docket No. 96-2379; Submitted on the Record;
Issued September 29, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his employment.

On September 18, 1992 appellant, then a 40-year-old mail processor, filed a claim alleging that he sustained an emotional condition which he attributed to his employment. Appellant alleged that his claimed emotional condition was caused by being required to watch a stress management film at work on March 24, 1992.[1]

In an attachment to appellant's claim form, the employing establishment stated that on March 23, 1992 appellant returned to work after being out of work for approximately one week, due to an employment-related injury caused by an exposure to a dog on March 2, 1992, and worked all day without incident. The employing establishment stated that on March 24, 1992 appellant was sent to a training center to view two training videotapes regarding managing stress and safety and that these same tapes were shown to all of the other employees in October 1991. The employing establishment stated that appellant complained about being sent to view the tapes. The employing establishment noted that appellant viewed the videotape on stress, refused to view the second videotape, refused to sign the training record, returned to his limited-duty assignment location, removed his personal belongings and left the premises.

In a report dated September 16, 1992, Dr. Bruce M. Smoller, a Board-certified psychiatrist, noted that appellant had viewed a videotape at work on managing stress on March 24, 1992 as did 850 other employees and that he refused to view the second videotape and

[1] The record shows that appellant had three prior injury claims accepted by the Office of Workers' Compensation Programs for incidents involving exposure to dogs which occurred on July 26, 1989, January 9, 1990 and March 2, 1992. These claims were combined into one case but the claimed injury on March 24, 1992 was developed as a separate claim.

signed out of the building. Dr. Smoller stated that there was no evidence in the record that viewing the videotape on March 24, 1992 caused symptoms great enough to be disabling.

In a report dated November 18, 1992, Dr. Andrew C. Bockner, a Board-certified psychiatrist and an employing establishment physician, provided a history of appellant's condition and the results of psychological testing and diagnosed resolved post-traumatic stress disorder and dysthymic disorder and a paranoid personality but he did not provide an opinion as to the cause of the condition other than to state that appellant was isolated from his family, harbored feelings of inadequacy and had displaced many of his feelings of alienation and rejection from his biological family to his "work family" at the employing establishment. He opined that appellant was able to work although he would probably continue to have problems with misperception of other people's intentions toward him.

In a letter dated March 2, 1995, an employing establishment human resources specialist related that the two videotapes that appellant was scheduled to see had been shown to all other employees several months prior as part of Safety and Health Awareness Month activities but that appellant was upset that he had to take the training. The specialist noted that appellant viewed the videotape on managing stress but refused to watch the videotape on safety and refused to sign the training record. The specialist noted that the purpose of having appellant view the videotapes was to help him in dealing with stress and safety issues and was not intended to upset appellant.

By decision dated May 15, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he had sustained an injury in the performance of duty on March 23, 1992.

By letter dated August 8, 1995, appellant requested reconsideration of the denial of his claim.

By decision dated September 28, 1995, the Office denied modification of its May 15, 1995 decision.

By letter dated December 19, 1995, appellant requested reconsideration of the denial of his claim.

In a report dated December 11, 1995, Dr. J. Richard Frazier, a Board-certified psychiatrist, related appellant's complaint that it was not the fact of viewing the videotapes on March 24, 1992 that upset appellant but rather it was the attitude of the employing establishment safety office toward his emotional condition caused by the employment injury on March 2, 1992 when appellant was exposed to a dog in his work area. He related that appellant became extremely upset and depressed when exposed to the dog, that he prescribed a week off work to aid appellant in his recovery and that the employing establishment safety office wrote to Dr. Frazier's office and complained that appellant had been placed off work when appellant had received ample leave for rest, in the opinion of the safety office. Dr. Frazier related that on the morning of the scheduled videotapes, appellant was given a written instruction to view the videotapes and that he called the safety officer before viewing the scheduled videotapes and the safety officer told appellant he could make him watch any videotape he wanted because

appellant was being paid for the time to watch the tapes. He related that appellant became frightened, intimidated and angry. Dr. Frazier stated that he was convinced that appellant was still very much upset and angry towards his employer when he returned to work on March 23, 1992 and that he did not want to view the videotapes on March 24, 1992 because of the confrontational attitude of the employing establishment.

By decision dated April 30, 1996, the Office modified its May 15, 1995 decision to reflect that the Office accepted that appellant had sustained an emotional condition and that the incident of March 24, 1992 occurred but that the incident did not occur in the performance of duty as the evidence did not establish that the employing establishment acted in error or abusively in requiring appellant to watch the videotapes on March 24, 1992.

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his employment.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[4] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[5]

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 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.[6] If a claimant does implicate a factor of

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[5] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[6] *See Margaret S. Krazyci*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.[7]

In this case, appellant alleged that he sustained an emotional condition due to being required to watch videotapes on March 24, 1992. He stated that he felt the employing establishment was harassing him by requiring him to view the tapes. The Board finds that requiring an employee to watch training films on the subjects of safety and stress management, relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[8] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[9] In this case, the employing establishment explained that the videotapes which appellant was instructed to view on March 24, 1992 had been shown to all other employees several months prior as part of Safety and Health Awareness Month activities. There is insufficient evidence that the employing establishment erred or acted abusively in requiring appellant to view the videotapes on March 24, 1992, particularly in light of the fact that all of the other workers at the employing establishment had been required to watch the same films. Thus, appellant has not established a compensable employment factor under the Act in this respect.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[10]

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[7] *Id.*

[8] *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[9] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[10] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated April 30, 1996 and September 28, 1995 are affirmed.

Dated, Washington, D.C.
September 29, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member