U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK S. TURKOVICH and U.S. POSTAL SERVICE,
POST OFFICE, Akron, Ohio

Docket No. 97-667; Submitted on the Record;
Issued April 22, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On September 12, 1995 appellant, then a 50-year-old mailhandler, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to his federal employment. In written statements and at an oral hearing, appellant attributed his claimed emotional condition to being monitored closely by management while he performed his job, having management inquire about a half hour absence from his work area,[1] being advised that he would be placed on restricted sick leave status if he lost any more time from work and having his limited-duty position work restrictions changed by management.[2]

In a letter dated October 26, 1995, Dr. Lawrence F. Bouchard, appellant's Board-certified family practitioner, stated that some of appellant's job duties could be perceived as stressful including working overtime, the intensity of the work assignments and conflicts with his supervisor. He related that appellant's supervisor monitored his activities closely and teased appellant. Dr. Bouchard stated that appellant did not have a myocardial infarction, only noncardiac chest pain and that it was conceivable that his symptoms were precipitated by stress.

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[1] Appellant stated that he had gone to the bathroom because his shoulders were hurting and when he returned, 30 minutes later, his supervisor asked where he had been.

[2] Appellant stated that he had proposed a limited-duty position within his physician's restrictions and that his supervisor was not abiding by the restrictions. He stated that another supervisor suggested that perhaps his immediate supervisor did not comprehend the work restrictions, that the employing establishment requested clarification of the restrictions from the physician and then his supervisor was instructed not to deviate from the restrictions. The record contains a March 20, 1995 letter from the employing establishment to appellant's physician requesting clarification of work restrictions and the physician's responses.

In a report dated November 13, 1995, Joan A. Wilson, a psychologist, related that appellant had expressed frustration and distress about his physical limitations related to a shoulder injury and harassment by supervisors because of his work restrictions. She stated her opinion that appellant was experiencing significant stress from coping with his physical limitations, chronic pain and harassment from his work situation.

In statements dated December 29 and 30, 1995, Mr. Gary Fenstemaker, appellant's supervisor, stated that appellant was among a group of employees who required constant and close monitoring as he was frequently missing from his assigned location and that he was questioned about his absences from his work location when the absences were frequent or lengthy. He denied that any attempt was made by management to change appellant's work restrictions, stating that an attempt was made only to clarify the restrictions.

In an unsigned statement, an unidentified coworker, stated his opinion that Mr. Fenstemaker was biased against certain workers and he voiced his complaint that many supervisors harassed employees and that mismanagement is rampant. He also related his own problems with Mr. Fenstemaker and stated his opinion that he was not fit to be a supervisor.

In an undated statement, Mr. David Cook, a coworker, stated that he had known appellant for 11 years and his personality had recently changed. He attributed the personality change to appellant's shoulder injury and stress caused by Mr. Fenstemaker.

In an undated statement, coworker, Mr. Jeffrey Caldwell related that on one occasion Mr. Fenstemaker asked appellant where he had been for the past 30 minutes, appellant replied that he had been in the bathroom and Mr. Fenstemaker stated that he was watching appellant.

By decision dated February 6, 1996, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he had sustained an emotional condition in the performance of duty.

By letter dated March 4, 1996, submitted through his representative, appellant requested an oral hearing before an Office hearing representative.

On August 27, 1996 a hearing was held before an Office hearing representative at which time appellant testified that he was often asked where he had been when he returned from his lunch break or a visit to the bathroom but that the employing establishment never took any disciplinary action and he never filed a grievance about the matter. Appellant testified that he sometimes went to the bathroom more frequently than usual when he was feeling ill. He testified that he never filed a grievance against Mr. Fenstemaker regarding his monitoring of appellant's whereabouts because he felt that filing a grievance would not solve the problem. Appellant testified that Mr. Fenstemaker changed his work restrictions but appellant refused to comply with the altered restrictions, that the employing establishment contacted the doctor who clarified the restrictions and that Mr. Fenstemaker was advised of the correct restrictions to follow.

In a letter dated September 19, 1996, responding to appellant's testimony, an employing establishment compensation specialist stated that, according to Mr. Fenstemaker, appellant did require greater supervision as he frequently was missing from his assignment and during his

absences he frequently stopped to talk with other employees and that his absences and conversations with other employees delayed the processing and delivery of mail. The specialist stated that appellant's restricted duties were not altered but that there was a time when there was some confusion and his duties were corrected after the employing establishment contacted appellant's physician. The specialist stated that appellant had less than 50 hours of sick leave after 10 years of service and that placing an employee on restricted sick leave was an administrative procedure used to control sick leave usage. The specialist stated that the employing establishment had honored all restrictions related to appellant's shoulder injury but that appellant had taken those restrictions and adapted them to his own interpretation to the point where it was disruptive in the workplace.

By decision dated October 31, 1996, the Office hearing representative affirmed the Office's February 6, 1996 decision.

The Board finds that appellant has failed to meet 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.[3] 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.[4]

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.[5] 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.[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 deemed compensable factors of employment and are to be considered by a physician when

[3] 5 U.S.C. §§ 8101-8193.

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

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

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

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]

Regarding appellant's allegation that he sustained an emotional condition due to having his activities at work closely monitored, being asked on one occasion why he had been away from his work location for a 30-minute period of time and being advised that he would be placed on restricted sick leave if he lost additional time from work, the Board finds that these allegations relate 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.[9] Although the handling of leave requests and the monitoring of activities at work is generally related to the employment, these are administrative functions of the employer and not duties of the employee.[10] 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.[11]

In this case, there is insufficient evidence that the employing establishment erred or acted abusively in its handling of appellant's sick leave matters. An employing establishment compensation specialist stated that appellant had less than 50 hours of sick leave after 10 years of service and that placing an employee on restricted sick leave was an administrative procedure used to control sick leave usage. As to the incident when appellant was asked by his supervisor where he had been for a 30-minute time period, in statements dated December 29 and 30, 1995, Mr. Fenstemaker, appellant's supervisor, stated that appellant was among a group of employees who required constant and close monitoring as he was frequently missing from his assignment and that he was questioned about his absences from his work location when they were frequent or lengthy. In an undated statement, coworker, Mr. Caldwell related that on one occasion Mr. Fenstemaker asked appellant where he had been for the past 30 minutes, appellant replied that he had been in the bathroom and Mr. Fenstemaker stated that he was watching appellant. This witness statement is insufficient to establish error or abuse on the part of the employing establishment in its handling of this incident. Mr. Fenstemaker had stated that appellant was frequently away from his work station and thus it would not appear unreasonable or abusive to

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

[8] *Id.*

[9] *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).

[10] *Id.*

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

query appellant as to his whereabouts on this occasion. Regarding appellant's allegation that his supervisor closely monitored his activities on other occasions, there is insufficient evidence of error or abuse on the part of the employing establishment. As noted above, appellant's supervisor had stated that appellant was often missing from his assigned location and that this was the reason for closely monitoring his activities. In a letter dated September 19, 1996, an employing establishment compensation specialist stated that, according to Mr. Fenstemaker, appellant did require greater supervision as he frequently was missing from his assignment and during his absences he frequently stopped to talk with other employees and that his absences and conversations with other employees delayed the processing and delivery of mail. Appellant testified at the oral hearing that the employing establishment never took any disciplinary action against him in regard to its monitoring of his activities and he never filed a grievance about the matter. He submitted an unsigned statement in which an unidentified coworker voiced his opinion that Mr. Fenstemaker was biased against certain workers and was not fit to be a supervisor, that many supervisors harassed employees and that mismanagement is rampant. However, no specific incidents of harassment are related and therefore this witness statement is not sufficient to support appellant's allegation of error or abuse in the employing establishment's monitoring of his activities. In an undated statement, Mr. Cook, a coworker, stated that he had known appellant for 11 years and his personality had recently changed which he attributed to appellant's shoulder injury and stress caused by Mr. Fenstemaker. However, no specific incidents are related in this statement and therefore it does not support appellant's allegation of harassment by the employing establishment in the monitoring of his activities. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that his work restrictions were changed, the Board 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.[12] In this case, the record indicates that appellant's supervisor may have revised his limited-duty position requirements, that appellant advised the employing establishment that he felt the changes were not consistent with his physician's restrictions and that the employing establishment then contacted appellant's physician to clarify the restrictions and the job requirements were corrected based upon the clarification from the physician. In light of the fact that there is no evidence that appellant ever actually performed work outside of his work restrictions and that the employing establishment corrected the job requirements after seeking clarification from appellant's physician, the Board finds that there was no abuse in the handling of appellant's work restrictions and any error there may have been on the part of the employing establishment in this matter was not sufficient for this factor to be deemed a compensable factor of employment.

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.[13]

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

[13] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 7.

The decisions of the Office of Workers' Compensation Programs dated October 31 and February 6, 1996 are affirmed.

Dated, Washington, D.C.
April 22, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member