

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD E. TODD and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, MO

*Docket No. 97-1674; Submitted on the Record;
Issued August 25, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

On May 24, 1995 appellant, then a human resource associate, filed a claim for an occupational disease (Form CA-2a) alleging that he suffered from major depression due to job stress. He stopped work on February 15, 1995. Appellant's claim was accompanied by factual and medical evidence.

By decision dated November 27, 1995, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that the claimed medical condition or disability arose out of factors of appellant's federal employment. In an accompanying memorandum, the Office found that appellant's allegations regarding changes by his new supervisor and being reprimanded by his supervisor constituted administrative matters and that the evidence of record was insufficient to establish that the employing establishment committed error or abuse in handling these matters. The Office also found that appellant's allegation regarding his heavy work load and the threat of termination by his supervisor's comments were not accepted as having occurred. The Office further found that the medical evidence of record failed to relate appellant's emotional condition to factors of his employment.

In a December 26, 1995 letter, appellant, through his representative, requested an oral hearing before an Office representative. By decision dated January 17, 1997, the hearing representative affirmed the Office's November 27, 1995 decision.

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 factors of his federal employment. To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹

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 coverage of workers' compensation law. When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability comes within the scope of the Federal Employees' Compensation Act. On the other hand, where the disability results from an employee's emotional reaction to employment matters that are not related to the employee's regular or specially assigned work duties or requirements of the employment, the disability does not fall within the coverage of the Act.² Disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁴ Therefore, the initial question presented in the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.

In this case, appellant has alleged that changes made by his new supervisor, Juanita Hendricks, which included elimination of the 10-minute morning and afternoon breaks, placement of multi-button telephones on all personnel telephones so that Ms. Hendricks and her

¹ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

² *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 2.

⁴ *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.

assistant, Sharon Carter, could eavesdrop on telephone calls, creation of a new leave policy⁵ on the premise that the work load was too heavy, installation of cubicles so that the employees could not see or talk to each other, and creation of a new policy for handling customers caused his emotional condition. These allegations involve administrative matters. Appellant's allegations that being reprimanded by Ms. Hendricks, his receipt of an August 24, 1990 warning letter concerning his attendance at work,⁶ the employing establishment's policy of no smoking in the building and the failure to offer him leave under the Family Leave Act⁷ caused his emotional condition also involve administrative matters.

The Board has held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.⁸ However, the Board has held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁹ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. Appellant has failed to establish that the employing establishment committed error or abuse in handling the above administrative matters.

Regarding elimination of the 10-minute breaks, Kathleen M. Robinson, appellant's supervisor, stated in an undated response to appellant's allegation that the breaks were eliminated around January 1993 with the employing establishment's reorganization. Denise R. Davila-Brownlee, appellant's supervisor, indicated in an undated narrative statement that the 10-minute breaks were eliminated due to employees eating and conversing "excessively" with their peers throughout the workday. Regarding the use of multi-button telephones, the record reveals that the employing establishment was concerned about appellant's personal telephone calls. Connie Allen, appellant's supervisor, stated in an undated attachment to appellant's Form CA-2 that on January 19, 1994 she sent appellant an e-mail message letting him know that he was receiving and making too many telephone calls. Ms. Allen further stated that she had received complaints from people who worked around appellant and that the situation became so bad that she began to notice it herself. Ms. Allen further stated that she then had a discussion with appellant about his

⁵ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁷ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁸ *Thomas D. McEuen*, *supra* note 3.

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

telephone use. Ms. Davila-Brownlee also stated that appellant made and received many personal telephone calls, and that she had several discussions with appellant about his personal calls.¹⁰ Contrary to appellant's allegation that a new leave policy was created by the employing establishment, Ms. Robinson stated that there was no leave policy, but that it was very difficult to get annual leave approved since January 1993. Ms. Davila-Brownlee stated that she could not recall the implementation of a leave policy and that she did not recall Ms. Hendricks approving or disapproving leave. She stated that she only recalled Ms. Allen and Ms. Carter approving or disapproving leave. Ms. Robinson stated that she did not feel that cubicles were installed to keep employees from talking to each other. Ms. Davila-Brownlee stated that as part of the "EI/QWL work team, personnel employees requested that cubicles be installed to portray a professional workplace for new employees at the employing establishment and that personnel had numerous file cabinets and very worn desks." Regarding the issuance of a reprimand, Ms. Allen stated that she gave appellant good performance evaluations and noted how his attendance at work had improved. Ms. Allen then stated that appellant began to miss long periods from work and that when discussions with him about his absences did not improve his attendance, she issued a warning letter to appellant.¹¹ Ms. Davila-Brownlee stated in response to appellant's allegation that he was not offered leave under the Family Leave Act, that appellant should have approached her about his concerns, that she had not received formal training about the leave until a subsequent period of time and that based on her knowledge of the law, appellant would not have met the criteria to support his absences. The record fails to establish that the employing establishment committed error or abuse in handling the above administrative matters. Further, appellant has failed to submit any evidence that the employing establishment committed error or abuse in creating a new procedure for handling customers and a no smoking policy. The Board, therefore, finds that appellant has failed to establish a compensable employment factor.

Additionally, appellant has alleged that Ms. Carter had a loud foul mouth and often used profanity in the office. Appellant also alleged that he was unable to communicate with Ms. Hendricks, Ms. Carter and Ms. Allen about work-related subjects. Appellant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.¹² Appellant has failed to submit any evidence to substantiate his allegations. Accordingly, appellant has not established a compensable employment factor.

Further, appellant has alleged that Ms. Allen's comment that "maybe I just need to get rid of you" during a discussion with him about his inability to satisfactorily perform his work duties

¹⁰ Although Ms. Davila-Brownlee stated that Ms. Carter requested each employee in the unit to sign a waiver allowing her to pick up their telephones and listen to their conversations and that this was neither a policy that she would have set nor did she feel comfortable with this policy, appellant has failed to establish that the employing establishment committed error or abuse in handling this matter.

¹¹ Although the record reveals that based on a review of appellant's record, the warning letter was removed from appellant's personnel file, the Board has held that the mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse. *Michael Thomas Plante*, 44 ECAB 510 (1993). Ms. Allen stated that the warning letter was pulled from appellant's file because he had improved his attendance. In this case, appellant has not submitted evidence showing that the employing establishment committed error or abuse in issuing a warning letter.

¹² *Ruthie M. Evans*, 41 ECAB 416 (1990).

caused his emotional condition. In response to appellant's allegation, Ms. Allen explained that she told appellant in a conversational tone that she would fix a problem that he was supposed to fix months ago since she had started it. Ms. Allen further explained that she told appellant that she had been finishing a lot of his work lately and that appellant replied "maybe you should just get rid of me." Ms. Allen then explained that she replied "maybe I will" and that "this was conversational, and in my opinion, somewhat teasing also, at least from my point of view." At the hearing, appellant testified that he did not feel that Ms. Allen's comment was made in a light-hearted environment and explained that when he went back to his desk, his vision became blurred, he felt anxious and he went to the medical unit to seek treatment. Appellant also testified that there was a witness to his discussion with Ms. Allen who has denied that her comment to appellant was made in a derogatory tone. Further, appellant has failed to submit a witness statement to support his allegation. Therefore, appellant has failed to establish a compensable employment factor.

Appellant has also alleged that his changes in his work duties and work load increased due to the employing establishment's November 1992 reorganization. While a heavy work load may constitute a compensable factor of employment, there must be sufficient evidence to substantiate an allegation of overwork.¹³ In the present case, there is sufficient evidence of record to substantiate appellant's allegation. Ms. Robinson stated that "[w]ith the reorganization in January 1993, everyone received an exorbitant amount of extra work because the staff was cut by 40 percent and [the] work load was increased by [at] least 100 percent. It was a very trying, stressful and difficult time for everyone." Ms. Allen also stated that the employing establishment underwent a dramatic reorganization in November 1992 "which resulted in a reduction in staff of 40 percent and an increase in work load." Regarding appellant's work load, the record reveals a January 13, 1995 e-mail message from Ms. Davila-Brownlee to Ms. Allen. Ms. Davila-Brownlee noted a conversation she had with appellant about his work load and that appellant advised her about the status of his work load and his inability to handle certain aspects of his work load in a timely manner. In a January 13, 1995 e-mail message, Ms. Allen advised appellant about her correspondence with Ms. Davila-Brownlee and suggested a way that appellant could accomplish his work load in a timely manner. Inasmuch as appellant's allegation that he had a heavy work load due to the employing establishment's reorganization is substantiated by the record, the Board finds that he has established a compensable employment factor.

Appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁴

The medical evidence of record in this case fails to establish that appellant's emotional condition was caused by the established compensable employment factor. The record reveals

¹³ *Frank A. McDowell*, 44 ECAB 522 (1993).

¹⁴ *William P. George*, 43 ECAB 1159, 1168 (1992).

unsigned medical treatment notes covering the period November 9, 1990 through February 24, 1995. Inasmuch as these notes were not signed by a physician they do not constitute competent medical evidence.¹⁵

The record also reveals the December 19 and 28, 1994 medical treatment notes of Dr. Dan Landberg, a licensed psychologist. These notes indicated that appellant had been assigned an increasing work load since mid-November. Dr. Landberg diagnosed adjustment disorder and indicated appellant's treatment. Dr. Landberg, however, failed to address whether appellant's emotional condition was caused by the compensable employment factor of overwork. Therefore, his medical treatment notes are insufficient to establish appellant's burden.

The record further reveals a February 15, 1995 medical note of Dr. Lewis Rosenblatt, a family practitioner, indicating that appellant had hypertension and that he should not work for at least 48 hours. Dr. Rosenblatt's treatment note failed to indicate that appellant's condition was caused by a compensable employment factor.

Additionally, the record reveals the February 17 and March 17, 1995 disability certificates of Ruth Lemonas, a registered nurse, indicating a diagnosis of major depression related to job stress and Ms. Lemonas' February 17, 1995 treatment notes indicating a diagnosis of depression. Ms. Lemonas' disability certificates and treatment notes do not constitute competent medical evidence inasmuch as a registered nurse is not considered a physician under the Act.¹⁶

The March 21 and May 30, 1995 disability certificates of Dr. Michael J. Marceau, a psychiatrist are insufficient to establish appellant's burden because they failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by a compensable employment factor.

Dr. Marceau's June 5, 1995 letter indicating that appellant had recurrent major depression failed to address whether appellant's condition was caused by a compensable employment factor. His July 28, 1995 letter revealed that appellant had recurrent major depression due to stress related to his work played a factor in appellant's depression. Dr. Marceau, however, failed to provide any medical rationale explaining how or why appellant's condition was caused by job stress.

In a July 31, 1995 letter, Dr. Darrel D. Robertson, a family practitioner, opined that a large contributing factor of appellant's severe depression was appellant's overwhelming work load and constant rudeness from his direct supervisor. Dr. Robertson failed to provide any medical rationale explaining how or why appellant's condition was caused by the established compensable employment factor of overwork.

The decision of the Office of Workers' Compensation Programs' hearing representative dated January 17, 1997 is hereby affirmed.

¹⁵ *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁶ 5 U.S.C. § 8101(2); *see also Joseph N. Fassi*, 42 ECAB 677 (1991).

Dated, Washington, D.C.
August 25, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member