

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK SANCHEZ and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, N.M.

*Docket No. 97-450; Submitted on the Record;
Issued March 11, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On December 6, 1994 appellant, a 49-year-old mail handler, filed a CA-2 claim for occupational disease, claiming he had sustained an emotional condition which he first became aware of on January 1, 1990. Appellant claimed on the form that due to stresses at work he had sustained impaired social and occupational functioning which had exacerbated his preexisting diabetes. Appellant also stated that work stress had caused his blood sugar level to become elevated to dangerously high levels, and that the stress of having uncontrolled diabetes had caused him a loss of sleep, memory and appetite, in addition to increased irritability.

Accompanying the form was a handwritten statement from appellant, dated December 6, 1994, in which he claimed that the stress and depression were due to the employing establishment's "attitude and mentality." Appellant claimed he would bring workplace problems to the attention of his supervisors, who not only refused to act on his suggestions but retaliated against him for acting as a whistle-blower. Appellant stated that he attempted to inform his supervisors about unsafe and hazardous workplace conditions, but that management ignored these complaints.

Accompanying the form was a November 17, 1994 report from Dr. Roger Felix, a specialist in family practice, who stated that he initially examined appellant on August 25, 1994, and that his "understanding" of appellant's medical condition was that he had Type II diabetes mellitus, which required insulin injections. He noted that appellant also had a high blood sugar level. Dr. Felix stated that appellant informed him he was under severe stress from his job at the employing establishment which was adversely affecting his diabetes. He stated that appellant appeared to be very angry and agitated regarding this issue, both during the initial examination and during his subsequent examination of September 2, 1994.

Dr. Felix further stated that subsequently, his conversations with appellant's treating psychologist confirmed that appellant was suffering from depression and anxiety of such magnitude that it was becoming difficult for him to function in work and social situations. Dr. Felix indicated that he had prescribed two anti-depressant medications and advised that "I have little doubt that [appellant's] job stress has aggravated his mental condition, and it is quite possible that the same stress actually precipitated the condition. Confirming the latter is difficult for me, since I did not meet [appellant] before he became depressed." Dr. Felix concluded that appellant's Type II diabetes was being exacerbated by his occupational stress, and that he had also developed depression and anxiety which had necessitated pharmacological treatment and psychotherapy. He stated that appellant's mental condition was severe enough to incapacitate him for work, that it was aggravated by his job and may have been caused by his job.

Appellant subsequently submitted a December 2, 1994 report from Dr. Timothy Strongin, appellant's treating psychologist, who stated "[i]t appears that [appellant] suffers considerable distress and anxiety associated with employment with [the employing establishment]. As a result, he has been on leave from work for several months. The impact of his stress seems to be that his diabetes is poorly managed and he becomes quite ill and unstable physically, following his distressful interactions at work." Dr. Strongin recommended that appellant seek other work settings that would be less stressful and less likely to provoke deterioration in his medical condition.

The employing establishment controverted appellant's claim in a letter dated December 13, 1994, contending that appellant's stress was not sustained in the performance of duty and was not caused by his assigned work duties.

In response to a January 10, 1995 letter from the Office of Workers' Compensation Programs requesting additional medical evidence, appellant subsequently submitted numerous medical records, including a December 2, 1994 report from Dr. Strongin. He stated:

"[Appellant] appears to be quite upset as a result of having lost his employment, he blames this primarily on his supervisors at the [employing establishment] and the inadequacy at that Office. Appellant requests evaluation of his ability to return to those duties. And it is my assessment that [appellant's] emotional stress is likely to influence his medical condition. The stress he perceives at the workplace is likely the result of his vulnerability to such circumstances, based on his prior history, but nevertheless, he experiences considerable stress in working at the employing establishment and should seek less stressful work either with the employing establishment or in other locations."

By decision dated April 21, 1995, 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. In a memorandum incorporated into the decision, the Office found that appellant failed to identify the specific factors of employment to which he attributed his disability. The Office therefore denied appellant compensation for his alleged emotional condition.

In a report dated May 16, 1995, Dr. Felix stated that, contrary to the Office's findings, appellant had related to him numerous incidents which appeared to have dramatically

exacerbated his stress and anxiety. He also stated that, according to appellant, there were many situations at the employing establishment where he attempted to point out to his supervisors that work was being carried out at the workplace in violation of regulations, and that, apparently, the response of appellant's supervisors was to harass appellant. Dr. Felix stated:

“[T]his resulted in appellant having strong feelings of anger and thoughts of possible revenge against his supervisors, thoughts which were noted both by myself and by Jim Orand, who is appellant's mental health counselor. While Mr. Orand and myself discussed this and felt that appellant was not going to pose an immediate danger to himself or people at his workplace, we also felt appellant was so overcome by the stress and anxiety resulting from the apparent harassment he received at work that it would not be a good idea for him to return to work because of the danger to his own mental health. It was also my observation that appellant had less control of his diabetes during periods of stress. He reported to me that when he was under the most stress at work, his blood sugar was higher, which was corroborated by the clinic laboratory results.”

By letter dated August 17, 1995 appellant requested reconsideration of the Office's previous decision.

In support of his request, appellant submitted a December 2, 1994 report from Dr. Strongin. He stated that based on his evaluation of appellant on the date of his report, he felt:

“[I]t appeared that [appellant] suffers considerable distress and anxiety associated with employment with [the employing establishment]. As a result, he has been on leave from work for several months. The impact of his stress seems to be that his diabetes is poorly managed and he becomes quite ill and unstable physically, following his distressful interactions at work. He seems to have improved very little during the several months that he has been off work. Based on my interview with him, and review of such notes as are available in the ... record, I would recommend that he seek other work settings that would be less stressful and less likely to provoke deterioration in his medical condition.”

In a letter dated May 22, 1995, Dr. Felix reiterated that, as appellant's treating physician, he had indicated to appellant that it would be harmful to his physical and mental health to return to work at the employing establishment because the stress he experienced there made it difficult to control his diabetes.

In a letter dated June 1, 1995, Mr. Orand, stated that appellant's medical and factual records indicated that, prior to making complaints about working conditions, appellant had been medically stable, had no psychiatric conditions and was considered an exemplary employee. The counselor stated that it was not until appellant made complaints regarding unsafe working conditions that he began to claim harassment on the part of his supervisors, which included maligning his character, threatening to falsely accuse him of crimes, and unauthorized denial of medically authorized sick leave. Mr. Orand stated that because of this harassment, appellant developed an adjustment disorder requiring psychiatric treatment which eventually disabled him from employment with the employing establishment and he recommended that appellant not

return to said employment. In a July 10, 1995 medical report, co-signed by Dr. Strongin and Mr. Orand, appellant was diagnosed as having an adjustment disorder with mixed anxiety and chronic depressed mood and stress-related physiological response affecting diabetes.¹

By decision dated September 5, 1995, the Office stated that it was modifying appellant's claim to the extent that he had submitted medical evidence sufficient to establish fact of injury, but determined that he had failed to submit sufficient evidence to establish that the claimed emotional condition arose from the performance of duty. The Office found that appellant failed to identify any specific employment factors alleged to have caused or contributed to the condition.

By letter dated June 21, 1996, appellant requested reconsideration of the Office's previous decision. Accompanying appellant's request was a list of alleged abuses of authority on the part of the employing establishment, which he had submitted prior to the Office's previous decision. These allegations include:

- (1) Abuse of authority on the part of management, including intimidating employees, using threatening messages to prevent employees from whistleblowing, reversing continuing management practices without union and employee notification;
- (2) Unfair labor practices and violations of union agreements pertaining to employee safety standards, which the employing establishment "discreetly corrected" after damages due to the violation had already taken place in order to gain approval from safety inspectors;
- (3) Reprisals from a previously filed Equal Employment Opportunity Commission [EEOC] grievance from which he continues to suffer repercussions and harassment; a general management pattern of harassment, "abusive practices" and reprisals in an effort to "break" appellant.
- (4) Abusive management practices with regard to leave approval; unreasonable demands from management to "prove" family relationships; intimidation toward employees [like appellant] who had filed grievances based on unsafe working conditions.
- (5) Abusive "management tactics" which led to appellant's physical and mental deterioration, and specifically to the worsening of appellant's heart condition to the extent where he underwent quadruple bypass surgery. Accompanying this statement were documents and medical records which the Office had reviewed in previous decisions.

¹ Appellant also submitted medical reports dated August 25 and September 2, 1994 from Dr. Felix in which appellant generally indicated that his job with the employing establishment was extremely stressful because of alleged mismanagement and harassment by his superiors.

By decision dated August 6, 1996, the Office denied appellant's claim on reconsideration, finding that appellant failed to submit evidence sufficient to warrant modification of its previous decision.

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.² There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.³

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 Federal Employees' Compensation Act.⁴ 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 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.⁵

It is well established that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. A claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁶ The Board has underscored that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable 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.⁷ The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *Norma L. Blank*, 43 ECAB 384 (1992).

whether the evidence of record substantiates that factor. 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.⁸

The Board 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.⁹

In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the alleged unreasonable actions involving personnel matters on the part of the employing establishment. These included denial of leave requests; a July 5, 1994 letter of warning for unacceptable attendance; suggestions for improvement which were not adopted by the employing establishment; an investigation and suspensions issued for sick leave abuse, unauthorized leave, restricted sick leave status and denial of annual leave for emergencies. None of these episodes constituted a factor of employment. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertaining to actions taken in an administrative capacity, and are not compensable as factors of employment.¹⁰

The Board further finds that appellant failed to substantiate his claim that he was harassed, mistreated or treated in an abusive or discriminatory manner. Appellant has not submitted any factual evidence to support these allegations. The only documentation in the record pertaining to appellant's allegations of harassment and/or discriminatory treatment was an April 5, 1991 decision by the EEOC, which had undertaken an investigation of the employing establishment in response to appellant's grievance that he had been discriminated against on the basis of national origin, physical handicap and reprisal when his request for scheduled sick leave was denied on July 23, 1990. The decision indicated that the EEOC had approved the employing establishment's settlement offer to change appellant's absences due to uncontrolled diabetes on

⁸ *Id.*

⁹ *Alfred Arts*, 45 ECAB 530 (1994).

¹⁰ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

the dates in question from unscheduled to scheduled and had pledged to administer referrals for fitness for duty on an equitable basis.¹¹ The decision stated, however, that appellant had rejected the employing establishment's offer, and that the case had therefore been closed. Appellant has submitted no evidence to support his claim that the employing establishment had engaged in a pattern of reprisals in retaliation for his filing of the EEOC grievance.

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. For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

Accordingly, appellant has failed to establish a factual basis for his allegations that his claimed emotional condition was caused by factors of his employment.¹²

¹¹ This settlement offer did not constitute an admission of guilt or wrongdoing on the part of the employing establishment. The mere fact that the employing establishment lessens or reduces a disciplinary action or sanction does not establish that the employer acted in an abusive manner towards the employee; see *Richard J. Dube*, 42 ECAB 916 (1991).

¹² The Board notes that the Office erred in its September 5, 1995 decision modifying its previous decision when it found that appellant had established fact of injury. As noted above, before such a finding can be made, the Office must first find that the matter asserted is a compensable factor of employment and that the evidence establishes the truth of the matter asserted. Only then may the Office base its decision to accept or reject the claim on an analysis of the medical evidence; see *Blank*, *supra* note 7. This error is harmless, however, given that the Office was correct in finding that appellant failed to establish a factual basis for his allegations that his claimed emotional condition was caused by factors of employment.

The decision of the Office of Workers' Compensation Programs dated August 6, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 11, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member