U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHORSIE E. MARTIN and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

Docket No. 98-2379; Submitted on the Record;
Issued April 14, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

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

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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.[1] 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.[2]

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.[3] This burden includes the submission of a detailed

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[1] 5 U.S.C. §§ 8101-8193.

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

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

description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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 of Workers' Compensation Programs, 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.[5] 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.[6]

On November 7, 1996 appellant, then a 51-year-old clerk, filed a claim alleging that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated October 30, 1996, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated and finalized April 21, 1998, an Office hearing representative denied modification of the Office's October 30, 1996 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that on November 7, 1996 Dan Rendleman, a supervisor, mishandled a situation, in which he felt he was ordered to sit next to a coworker, Frank Conners, with whom he had experienced conflict in the past. He argued that Mr. Rendleman's actions were contrary to established policy. Appellant alleged that on several occasions beginning in 1989 Mr. Rendleman and other supervisors wrongly denied his requests for leave. Regarding appellant's allegations that the employing establishment mishandled the sitting arrangements on November 7, 1996 and wrongly denied leave, 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.[7] Although the handling of sitting arrangements and leave requests are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[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

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

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

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

[8] *Id.*

the employing establishment acted reasonably.[9] Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse in connection with the handling of sitting arrangements and leave requests. Appellant filed an Equal Employment Opportunity complaint in connection with the November 7, 1996 incident, but the record does not contain a decision showing that the employing establishment committed wrongdoing.[10] Thus, appellant has not submitted sufficient evidence to establish a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. Appellant alleged that Mr. Rendleman directed loud and abusive language towards him on November 7, 1996 and was attempting to get him to start a confrontation with Mr. Conners. Appellant also alleged that other supervisors and coworkers subjected him to harassment and discrimination, including a supervisor, Clifford Hall, and a coworker, Carol Rieves, by subjecting him to abusive and bigoted language. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[11] However, 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.[12]

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.[13] Appellant alleged that supervisors and coworkers made statements and engaged in actions, which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[14] With respect to the November 7, 1996 incident, appellant has acknowledged that he called Mr. Rendleman a "smart ass" and there is no evidence that Mr. Rendleman yelled or used abusive language.[15] Appellant filed grievances with respect to some of the other alleged instances of harassment and discrimination, but these grievances all resulted in either a denial or a settlement without prejudice to the employing establishment. Thus, appellant has not established a compensable employment factor under the Act in this respect.

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

[10] The record contains a March 1995 settlement agreement between management and the union regarding sitting arrangements, but it does not show that the employing establishment erred on November 7, 1996.

[11] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[12] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[13] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[14] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[15] The statement of coworker suggests that appellant was abusive towards Mr. Rendleman.

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.[16]

The decision of the Office of Workers' Compensation Programs dated April 21, 1998 is affirmed.

Dated, Washington, D.C.
April 14, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

[16] 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).