U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY J. GOLAN and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

Docket No. 99-69; Submitted on the Record;
Issued November 3, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing an emotional condition due to factors of his federal employment.

The Board has duly reviewed the record on appeal and finds that appellant failed to meet his burden of proof in establishing an emotional condition due to factors of his federal employment.

Appellant filed a claim on May 29, 1997 alleging that he developed an emotional condition due to factors of his federal employment. He failed to submit any medical evidence in support of his claim and the Office of Workers' Compensation Programs denied his claim for failure to establish fact of injury on November 6, 1997. Appellant requested an oral hearing, and by decision dated August 13, 1998 and finalized August 14, 1998, the hearing representative found that appellant failed to establish a compensable factor of 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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.[1]

In this case, appellant alleged that the Postmaster Anthony Brescia created a hostile work environment for appellant following his return to work from accepted employment injuries.[2] He

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[1] *Lillian Cutler,* 28 ECAB 125, 129-31 (1976).

[2] Appellant also filed two complaints with the Equal Employment Opportunity Commission (EEOC). He alleged

stated that on May 29, 1997 Mr. Brescia stated that he was not interested in working with appellant in developing a light-duty position and that he considered interactions to be a chess game. Appellant stated that his superiors banned him from the copy room at the employing establishment, ordered him to box mail in a raised voice and banned him from speaking to union members during working hours. For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[3] In this case, appellant has submitted no evidence in support of his allegation of harassment or discrimination on the part of his supervisors. Mr. Brescia submitted a statement asserting that appellant was uncooperative and that he was offered work within his restrictions. The Board finds that appellant has not substantiated this employment factor.

Appellant attributed his emotional condition to Office delays in approving his right shoulder condition and resulting surgery. The Board has held that matters relating to the handling of worker's compensation claims are administrative in nature and do not arise in the performance of duty.[4]

Appellant attributed his emotional condition to requests for documentation of sick leave, to a letter regarding his sick leave balance and to a change in his light-duty position. These actions are considered by the Board to be administrative matters within the discretion of the employing establishment. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[5] In this case, appellant has submitted no evidence in support of his allegation that the employing establishment acted unreasonably in addressing matters of leave or in changing his light-duty position.

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discrimination on the basis of physical disability, mental disability and by retaliation for prior EEOC activity in that on October 3, 1997 he was forced to work outside his medical restrictions and was given a revised job offer. Appellant also alleged discrimination on the basis of physical disability in that on May 7, 1997 he accepted a permanent limited-duty assignment with reservation and under protest. He did not submit any evidence to substantiate these complaints in the form of witness statements or other documentation.

[3] *Alice M. Washington*, 46 ECAB 382 (1994).

[4] *Bettina M. Graf,* 47 ECAB 687, 689 (1996).

[5] *Martha L. Watson,* 46 ECAB 407 (1995).

The allegation that appellant was required to perform duties outside of his work restrictions for accepted employment-related injuries could, if substantiated, constitute a compensable factor of employment. However, as previously noted, Mr. Brescia denied that appellant was required to work outside his restrictions and appellant has submitted no evidence supporting his allegation.

At the oral hearing, appellant attributed his emotional condition to the physical effects of his accepted employment injuries. In order to establish that he developed an emotional condition as a result of his accepted employment injuries, appellant must submit medical evidence establishing a causal relationship between his accepted conditions and his diagnosed emotional condition.[6] Appellant submitted a report dated October 19, 1997 from Dr. Paul S. Webster, a physician, addressing appellant's physical condition. He concluded his report by recommending that appellant see a psychiatrist for a full evaluation and by diagnosing chronic depression.[7] Although this report provides a diagnosis of an emotional condition and also provides a history of appellant's physical conditions, Dr. Webster did not provide any opinion on the causal relationship between the diagnosed condition of depression and the accepted employment injuries. Rather, the physician made a recommendation that appellant be seen by a psychiatrist. Without such medical opinion evidence, this report is not sufficient to meet appellant's burden of proof.

Appellant also submitted a report dated December 4, 1997 from Dr. Karen R. Teston, a Board-certified psychiatrist, who noted that appellant attributed his emotional distress to "mistreatment on the job" including his interactions with Mr. Brescia. Dr. Teston noted appellant's physical injuries and diagnosed major depression, severe with psychotic features, single episode. However, she did not provide any opinion on the causal relationship between appellant's employment injuries or his "mistreatment on the job" and his diagnosed condition. Without a medical opinion addressing the causal relationship between appellant's diagnosed depression and his employment injuries, this report is not sufficient to meet appellant's burden of proof.

As appellant has failed to establish a compensable factor of employment and has failed to submit the necessary medical opinion evidence to establish a causal relationship between his diagnosed emotional condition of depression and his accepted employment-related physical injuries, he has failed to meet his burden of proof.

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[6] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[7] The copy of this report in the record is virtually illegible. However, appellant included a duplicate copy with his appeal to the Board.

The August 14, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 3, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member