U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK KAPANOWSKI and U.S. POSTAL SERVICE,
LOOP STATION-LOCKBOX, Chicago, IL

Docket No. 99-1975; Submitted on the Record;
Issued October 2, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

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

Appellant, a clerk, filed a notice of occupation disease on February 18, 1998 alleging that he developed severe stress due to changes in his work schedule. Appellant stopped work on January 30, 1998. By decision dated April 13, 1998, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to establish a compensable factor of employment. Appellant requested an oral hearing on May 6, 1998. By decision dated February 19, 1999, the hearing representative denied appellant's claim finding that his alleged work factors were not compensable.

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 attributed his emotional condition to a proposed change in his work schedule. On January 30, 1998 the employing establishment provided appellant with notice that

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

on January 31, 1998 he would be converted to a full-time flexible clerk with a schedule of 8:30 a.m. to 5:00 p.m. with regular days off of Wednesday and Thursday. Appellant stated that his normal work hours were Monday through Friday from 7:00 a.m. to 3:30 p.m. with Saturday and Sunday as regular days off.

The Board notes that the present case does not involve a "change" in appellant's existing duty shift. The Board has recognized that working a rotating or fluctuating shift or a reassignment made to a different shift schedule may constitute a factor of employment in determining whether an injury has been sustained in the performance of duty. However, a proposed shift change that has not been implemented is not compensable under the Federal Employees' Compensation Act.[2] In this instance, appellant's shift was not altered from a day to night shift such that his sleep patterns would be disturbed. Instead the employing establishment proposed to promote appellant and consequently alter his work schedule by an hour and a half per day. Furthermore, appellant did not actually attempt the change in work hours prior to filing his claim. For these reasons, the Board finds that appellant has not establish that his change in work hours constituted a compensable factor of employment.

Appellant stated that he was harassed and discriminated against as white employees who failed to work holidays were not penalized. 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. 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] Appellant has submitted no evidence in support of his claim for harassment. Appellant's supervisor denied that appellant was treated differently or harassed. Therefore, appellant has not established compensable harassment or discrimination.

Appellant stated that his emotional condition was due in part to pursuing his Equal Employment Opportunity Commission (EEOC) complaints. The Board has held that an allegation of stress resulting from an employee's participation in EEOC proceedings will not afford coverage under the Act.[4]

Appellant also attributed his emotional condition to an alleged mistake in his seniority. Appellant stated that the employing establishment informed him on May 12, 1998 that his seniority date was December 16, 1993. However, appellant stated that he signs "a piece of paper on the board in my place where I work" that gives his seniority date as September 14, 1995. 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

[2] *Eileen P. Corigliano,* 45 ECAB 581, 585 (1994).

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

[4] *Blondell Blassingame,* 48 ECAB 130-31 (1996).

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 that the employing establishment has used alternate dates of seniority, therefore, he has failed to establish error or abuse in an administrative action on the part of the employing establishment.

Appellant attributed his emotional condition to a change in his status from a full-time rehabilitation modified clerk on June 14, 1995 to a part-time flexible clerk on August 11, 1995. Appellant stated that this change resulted in loss of pay, leave, denied him the opportunity to bid on permanent positions and resulted in required holiday work. While appellant has submitted evidence that the change did occur, he has submitted no evidence that this change constituted error or abuse on the part of the employing establishment. As noted previously, appellant must establish that the employing establishment erred or acted abusively. Instead appellant indicated that the employing establishment was complying with an arbitration decision. As there is no evidence in the record that the employing establishment erred in altering appellant's position, appellant has not establish a compensable factor of employment and the Office properly denied his claim.

The February 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

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