U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES J. ROTH and U.S. POSTAL SERVICE,
POST OFFICE, Island Pond, VT

Docket No. 98-1863; Submitted on the Record;
Issued September 13, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

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

On June 7, 1997 appellant, then a 55-year-old postmaster, filed a claim for compensation benefits alleging that he had sustained an emotional condition, which he attributed to factors of his federal employment. He attributed his emotional condition to: being required to work overtime hours, fear of losing his job, having his medical restrictions violated, having a computer removed from his office, having his claim forms mishandled by his supervisor, not receiving sufficient training, having unfair disciplinary actions imposed, which included suspensions and removal from his position, having his family hear rumors about his problems at work, being mistreated in a December 5, 1996 meeting with his supervisors, being threatened by another employee, Mr. Oak and having management take no action, being forced to make schedule changes, which he felt were illegal, being asked to leave the White River Junction facility on June 17, 1996 where he had gone to review files regarding charges against him by his supervisor and being mistreated by Richard Duggan, an employing establishment labor relations specialist, on June 19, 1996 at the White River Junction facility when he sought to obtain copies of files.

The record contains a memorandum dated September 16, 1993 in which an employing establishment inspector stated that an investigation into allegations that Mr. Oak threatened appellant on July 26, 1993, had been completed and further investigative attention was not warranted. The report notes that on August 25, 1993, Mr. Oak was given notice of removal and advised not to take any retaliatory actions against appellant.

In a report dated August 15, 1996, Dr. Michael D. McNamara, a clinical psychiatrist, provided a history of appellant's condition and diagnosed major depression, single episode, severe and aspects of severe anxiety.

In a report dated October 9, 1996, John A. Corson, Ph.D., a clinical psychologist, related that appellant suffered from a number of medical conditions that were exacerbated by stress and that appellant attributed his condition to events at the employing establishment.

In a deposition dated October 18, 1996, regarding appellant's Merit Systems Protection Board claim against the employing establishment, Mr. Duggan related that on June 19, 1996, appellant came to his building to obtain some documents concerning charges made against him by his supervisor. Mr. Duggan asked appellant to wait in the employee break room while he copied documents for appellant but later found appellant in another area of the office. Mr. Duggan asked appellant to accompany him to his office to complete their business as appellant had left some belongings there but appellant walked away. He stated that he told appellant to "get into [his] f[--]king office" and that this was overheard by one other employee. Mr. Duggan indicated that he used this language because appellant was ignoring him.

The record contains a copy of a November 14, 1996 settlement agreement between appellant and the employing establishment. One paragraph of the agreement notes that it should not be construed as an admission of wrongdoing, liability or discrimination by the employing establishment and that appellant agreed to this provision.

On December 5, 1996 appellant received a letter of suspension for 21 days, which was part of the terms of the settlement agreement with the employing establishment in November 1996.

By letter dated June 4, 1997, the employing establishment advised appellant that he was being reduced in grade and rank effective June 21, 1997 because he had failed to make daily deposits of postal funds on several occasions and because he had deprived two employees of work hours through an unjustified schedule change. The employing establishment noted that appellant had been disciplined in the past for failure to follow procedures and for unacceptable conduct and had been advised in December 1996 that further infractions would result in additional disciplinary measures. The specific details regarding the reasons for this June 4, 1997 disciplinary action are contained in the notice of charges and proposed reduction in pay dated April 21, 1997.

By letter dated August 20, 1997, in response to a July 25, 1997 letter from the Office of Workers' Compensation Programs requesting that the employing establishment comment on appellant's allegations, Donald F. Lemay, manager of Post Office Operations, related that on December 18, 1996 appellant was placed on administrative leave for taking reprisal actions against his employees and for financial improprieties and that he had previously been suspended for yelling at customers and for financial improprieties. He stated that appellant was not threatened nor was any hostile action taken while appellant was placed on administrative leave but he was asked to return his keys. Mr. Lemay related that appellant had returned to work on December 2, 1996 after a settlement agreement was reached from a prior disciplinary action. He stated that the employing establishment had complied with appellant's restrictions as outlined in a November 20, 1996 letter from his physician. Mr. Lemay stated that appellant had been a postmaster for many years and had received sufficient training on all aspects of his job and that there were no deadlines in his office that could create undue stress. He stated that appellant had adequate staffing and there was no extra work load. Mr. Lemay denied that appellant was

ordered to work more than 40 hours. He stated that appellant had been issued a letter downgrading him to a clerical position and that this action was currently being adjudicated.

In a letter dated February 24, 1998, Mr. Lemay stated that the December 5, 1996 meeting with appellant was used to establish some job requirements following his return to work on December 2, 1996 and was meant to be a constructive meeting to assist appellant. He related that appellant was told that he was required to work 40 hours a week, from 8 a.m. to 5 p.m. and that this schedule complied with his medical restrictions.[1] On his copy of this letter, appellant indicated that he chose not to take a lunch break during the workday. Mr. Lemay stated that appellant's trip to see Mr. Duggan on June 17, 1996 was not planned in advance and he was asked to leave the building but that he obtained the information he was seeking on June 19, 1996 although there were some harsh words spoken by Mr. Duggan regarding appellant's behavior.

By decision dated March 18, 1998, the Office denied appellant's claim for compensation benefits.

The Board finds that appellant has not met 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.[2] 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.[3]

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.[4] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[5]

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[1] In a report dated November 20, 1996, Dr. Peter Harris stated that appellant should not work more than 40 hours a week due to his diabetes and coronary artery disease.

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

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

[5] *Effie O. Morris*, 44 ECAB 470, 473 (1993).

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, 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.[6] 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.[7]

Regarding appellant's allegations that the employing establishment imposed unfair disciplinary actions which included suspensions and removal from his position, removed a computer from his office, did not provide him with sufficient training, asked him to leave the White River Junction facility on June 17, 1996 where he sought to obtain information regarding charges against him made by his supervisor and asked him to make some schedule changes which appellant believed were illegal, the Board finds that these allegations relate to administrative or personnel matters, are unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[8] Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[9] 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.[10]

In this case, the employing establishment denied that it had erred or acted abusively in the handling of these administrative or personnel matters. The employing establishment provided explanations for the disciplinary actions taken, noting that appellant had failed to make daily deposits of funds as required, had improperly deprived two workers of work hours, had yelled at customers and had committed other infractions. There is of record a copy of a November 14, 1996 settlement agreement between appellant and the employing establishment but the agreement contains no finding and no admission by the employing establishment of error or wrongdoing in its administrative or personnel dealings with appellant. Mr. Lemay, an employing establishment manager, stated that appellant had been a postmaster for many years and had received sufficient training on all aspects of his job. There is also insufficient evidence of the employing establishment's error or abuse regarding the removal of a computer from appellant's office and the June 17, 1996 incident. As appellant has provided insufficient

[6] *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

[7] *Id.*

[8] *See Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[9] *Id.*

[10] *Id.*

evidence in support of these allegations, he has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that he developed stress due to fear of losing his job, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[11]

Regarding the June 19, 1996 incident when appellant alleged that he was mistreated by Mr. Duggan, an employing establishment labor relations specialist, Mr. Duggan related that on June 19, 1996, appellant came to his building to obtain some documents concerning charges made against him by his supervisor. He stated that he asked appellant to wait in the employee break room while he copied documents for appellant but that he later found appellant in another area of the office. Mr. Duggan asked appellant to accompany him to his office to complete their business but appellant instead walked away. He acknowledged that he swore because appellant was ignoring him. Although Mr. Duggan's language was inappropriate, it appears that because appellant would not accompany him to his office to conclude their business, which brought appellant to Mr. Duggan's facility. Considering all the circumstances, the Board finds that this incident does not rise to the level of a compensable factor of employment.[12]

Regarding the December 5, 1996 meeting when appellant alleged that he was mistreated by his supervisors, Mr. Lemay stated that the December 5, 1996 meeting with appellant was used to establish some job requirements following his return to work on December 2, 1996 after a disciplinary suspension and was meant to be a constructive meeting to assist appellant. There is insufficient evidence of record that the employing establishment erred or acted abusively regarding the meeting on December 5, 1996. Therefore, this allegation is not deemed a compensable factor of employment.

Regarding appellant's allegation that the employing establishment required him to work overtime, the Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.[13] In *Georgia F. Kennedy*,[14] the Board listed employment factors, which would be covered under the Act, including an unusually heavy work load and imposition of unreasonable deadlines. In the instant case, Mr. Lemay stated that there were no deadlines in appellant's office that could create undue stress and that appellant had adequate staffing and there was no extra work load. He denied that appellant was ordered to work more than 40 hours. The record shows that appellant's work shift was from 8 a.m. to 5 p.m. but this schedule would include a lunch hour, which appellant indicated that he chose not to take. Therefore, this allegation is not deemed a compensable factor of employment.

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[11] *See Artice Dotson*, 41 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337 (1986).

[12] *See Dennis M. Dupor*, 51 ECAB ___ (Docket No 98-2295, issued April 18, 2000) (mere utlerance of epithet, which may engender offended feelings not a compensable factor).

[13] *See Georgia F. Kennedy*, 35 ECAB 1151 (1984); *Joseph A. Antal*, 34 ECAB 608 (1983).

[14] *Georgia F. Kennedy*, *supra* note 13.

Regarding appellant's allegation that the employing establishment violated his medical restrictions, the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.[15] However, in this case, the employing establishment denied that it had failed to honor appellant's work restrictions and appellant has provided insufficient evidence to support this allegation. Therefore, it is not deemed a compensable factor of employment.

Regarding appellant's allegation that he was threatened by an employee, Mr. Oak and management took no action, the record shows that an investigation was performed by the employing establishment, that Mr. Oak was removed from his position and that he was warned against taking any retaliatory action against appellant. Appellant has failed to establish that the employing establishment erred or acted abusively in its handling of this matter and, therefore, this allegation is not deemed a compensable factor of employment.

Regarding appellant's allegations that the employing establishment mishandled his compensation claim, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[16]

Regarding appellant's allegation that his family heard rumors regarding his difficulties at work, this allegation does not relate to his regular or specially assigned duties and is not deemed a compensable factor of employment.

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.[17]

[15] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[16] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[17] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 6.

The decision of the Office of Workers' Compensation Programs dated March 18, 1998 is affirmed.

Dated, Washington, DC
September 13, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member