U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELO T. ARENA and U.S. POSTAL SERVICE,
GENERAL POST OFFICE, Brooklyn, NY

Docket No. 00-1382; Submitted on the Record;
Issued April 18, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

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

On November 20, 1998 appellant, then a 45-year-old supervisor of customer service, filed a claim alleging that he suffered incapacitating depression and anxiety when he was informed that he was to be reassigned to another position and his shift would be changed. He stopped work on November 20, 1998, four days after he was informed of his proposed reassignment. In a May 12, 1999 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that he failed to establish that his emotional condition was sustained in the performance of duty. In a merit decision, dated December 17, 1999, the Office found the evidence insufficient to warrant modification of its May 12, 1999 decision.

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]

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[1] *Christophe Jolicoeur*, 49 ECAB 553 (1998).

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

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.[3] 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.[4]

Appellant alleged that on Monday, November 16, 1998 his supervisor informed him that he was changing his tour and job description as of the following Thursday because appellant "was not a team player" and that until he became a team player, he would be assigned to the late tour dealing with the window clerks. Appellant stated that the next day he had a meeting with an area manager, with no results, and that Wednesday was his day off. When he reported for his new tour on Thursday, he was informed that he would only have two weekdays of training, which added to his stress.

Appellant stated that he could not file his stress claim that day, however, as his supervisor was out of the office, but had to wait to file until Friday, November 20, 1998. He stated that on that Friday, he had to go to the health unit where he was found to have high blood pressure and a rapid heart beat and was told he was suffering from stress. Appellant again visited the health unit on November 23, 1998, at which time he was referred to a psychologist.

In statements dated December 31, 1998 and January 25, 1999, the employing establishment controverted appellant's claim. The employing establishment clarified that appellant had not been reassigned to the night shift, but had been scheduled to cover the late supervisory tasks associated with closing out the station for the evening. The employing establishment explained that the supervisor who had previously covered this shift had been recently transferred to another station, creating a vacancy which had to be covered utilizing the existing supervisory staff. Appellant was chosen to cover the shift as he was a seasoned employee with many years of experience, had excellent qualifications and had previously performed this same job.

In addition, to better serve the public, the employing establishment asserted that it was essential for all supervisors to receive cross-training in all aspects of the daily operations of the station, as well as refresher training in window services on an as-needed basis. The employing establishment also stated that the reassignment was only temporary and that appellant would be returned to his prior position as soon as another supervisor could be trained to fill the vacancy.

In statements dated November 20, 1998 and January 20, 1999, appellant's immediate supervisor, Joseph A. Celentano, also responded to appellant's allegations. He stated that

[3] *Christophe Jolicoeur*, *supra* note 1; *see Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[4] *Id.*

appellant's initial reaction to being informed of his new duties was to say that he would file a grievance and it was this reaction that led him to inform appellant that, in his opinion, he was not conducting himself as a team player. Mr. Celentano added that appellant had supervised window operations many times during his tenure with the employing establishment and was offered three days of refresher training as a minimum. He asserted that appellant did not question the amount of training offered at the time of their discussion.

While a change in duty shift may constitute an employment factor, appellant claimed that the work shift change was instituted in a punitive fashion, because he was not a team player, rather than because of any actual change in work shift. However, appellant stopped work before assuming the duties of his new shift. Therefore, the Board finds that appellant has not established that the shift change in itself was a compensable work factor.[5] Rather, the Board finds that the employing establishment's decision to reassign appellant was an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties.[6]

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 the employing establishment acted reasonably.[7]

In attempting to corroborate his claim that the employing establishment acted in an abusive manner, appellant stated that he had been reassigned because his supervisor felt he was not a team player, and was further told he would not be returned to his prior position until he learned to be one. While Mr. Celentano confirmed that he did tell appellant he was not being a team player, he stated that this comment was the result of, not the reason for, informing appellant he would be assigned. Further, the employing establishment clearly explained that the decision to reassign appellant to fill the temporary vacancy was based on the needs of the agency and appellant's qualifications for, and prior experience with, the position. While appellant has alleged that his proposed reassignment was abusive, he has not submitted any evidence to support his allegations.

Appellant also submitted, in support of his claim, a portion of the employing establishment's Employee Relations Manual, several articles from various publications and medical reports from his treating physicians. However, materials from newspapers and other publications are of no probative value to support a claim for compensation, because they are generalized and do not pertain to appellant's specific situation.[8] As appellant did not submit any evidence to support his claim that the employing establishment committed error or abuse in connection with its November 16, 1998 decision to reassign appellant, he has not established a compensable employment factor under the Act with respect to this administrative matter.

[5] *Elizabeth Pinero*, 46 ECAB 123 (1994).

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

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

[8] *See George W. Sinner*, 33 ECAB 254 (1981); *John D. Baskette*, 30 ECAB 761 (1979).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty. As he has not established any compensable employment factors, the Board need not consider the medical evidence of record.[9]

The decisions of the Office of Workers' Compensation Programs dated December 17 and May 12, 1999 are affirmed.

Dated, Washington, DC
April 18, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[9] *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).