

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES P. BATTLE and U.S. POSTAL SERVICE,
POST OFFICE, Fayetteville, AR

*Docket No. 99-322; Submitted on the Record;
Issued January 2, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

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

On February 28, 1995 appellant filed an occupational disease claim alleging that his stress and high blood pressure was due to harassment and intimidation by his supervisor and postmaster at work.¹ He specifically noted that the postmaster suspended him for two weeks without pay in December 1994 and again in February 1995. In addition, appellant stated that the “[p]ostmaster has taken it upon himself to be my rehabilitation counselor and has changed my job without reason and made work conditions impossible for someone who wants to do a good job.”²

In letter dated June 25, 1995, appellant submitted a statement alleging harassment and intimidation he had been subjected to by the employing establishment and coworkers. He alleged that “problems of harassment and intimidation” began in 1990 when he had problems with pain in his left ankle. Appellant alleged that his supervisor tried to get him to return to work after his ankle fusion surgery and before his physician released him to return to work, that he was shifted around in his details and provided with a chair with broken springs, that he was called names by coworkers such as “gimp” or “crip,” or “winslow whiner” or “hop along,” and that he was not allowed to work overtime. He also alleges that the employing establishment tried to force him to retire, that he was not provided any rehabilitation or retraining after he was offered a job on February 5, 1991, that he was given secretarial duties, and that he was not allowed to act

¹ This was assigned claim number 16-0255980. Appellant has two other claims. Appellant filed an occupational disease claim on December 15, 1993 and accepted for bilateral tennis elbow and bilateral carpal tunnel syndrome. The Office of Workers' Compensation Programs on August 18, 1998 combined these two files with claim number 16-0237930 as the master file.

² Appellant was terminated from the employing establishment effective November 24, 1995 which was later changed to reflect that appellant's separation was voluntary based upon disability retirement.

as a relief supervisor because he was on limited duty. Appellant alleged that Wendy Eiter, Larry Lee and Tracy Mulvaney made nasty or sarcastic comments about him during June 1994. In addition, appellant alleged that he was called an “asshole” by Dennis B. Callahan, a coworker and Thomas Traylor, a coworker, told him to shut up and get a life. Lastly, appellant alleged that the employing establishment denied his leave request for two weeks on December 15, 1994 about one month later without any explanation, that the union and employing establishment colluded in having a grievance he filed denied as untimely filed, and that he was issued a 14-day suspension on January 14, 1995.

In treatment notes for the period February 17 through September 14, 1995, Dr. Curtis L. Hedberg, an attending Board-certified internist, diagnosed hypertension, tension headaches, situational stress and anxiety syndrome. Dr. Hedberg attributed appellant’s severe stress to his work and continuing headache symptoms and high blood pressure.

In a June 28, 1995 letter, Dr. Hedberg diagnosed depression and situational anxiety due to appellant’s stress from alleged harassment and mistreatment from appellant’s supervisors at work. He opined that appellant could not make a full recovery until the stressors causing appellant’s depression and situational anxiety were removed.

In a September 14, 1995 letter, Dr. Hedberg concluded that appellant continued to be suffering from stress due to his job and that appellant continued to report being harassed at work.

In a letter dated March 7, 1995, the employing establishment disputed that appellant had been harassed.

In an affidavit dated March 3, 1995, Elise Holdar stated that her supervisor, Jack Weatherford, called her outside on or about March 20, 1995 and “stated that there were a couple of injured employees that he wanted ‘out of the office, because there is no place in the [employing establishment] for these kind of people.’” Ms. Holdar indicated that this statement alarmed her because she had previously been on light duty due to an employment injury and was concerned how Mr. Weatherford would treat her. She also stated that appellant was the only injured employee in March 1995 for which the employing establishment was trying to find a job.

In an October 23, 1995 decision, the Office found that appellant failed to establish that he sustained an emotional condition in the performance of duty.

In a letter dated November 5, 1995, appellant requested a written review of the record by a hearing representative.

By decision dated February 1, 1996, the hearing representative affirmed the October 23, 1995 Office decision.

In a report dated February 20, 1996, Dr. Robert R. Pang, an attending Board-certified psychiatrist, based upon a medical and employment history and examination, diagnosed major depression which he attributed to workplace stress. In support of his conclusion, Dr. Pang noted that “over the last several years there have been significant psychosocial and work stress at this place of work which has culminated in several physical problems and also emotional stress” and appellant had “scant family history of depression.”

By letter dated October 7, 1996, appellant requested reconsideration and submitted evidence in support of his request.

On November 14, 1996 the Office denied appellant's request for reconsideration, after a merit review, on the basis that the evidence did not establish any new compensable factor and the medical evidence was insufficient to establish a causal connection to the factors found compensable by the hearing representative.

By letter dated March 11, 1997, appellant requested reconsideration of the decision denying his claim.

In a June 3, 1997 merit decision, the Office denied appellant's request for reconsideration on the basis that the evidence did not establish any new compensable factor and the medical evidence was insufficient to establish a causal connection to the factors found compensable by the hearing representative.

In a June 9, 1997 letter, Dr. Pang concluded that appellant's major depression was "secondary to the medical disabilities that he has encountered in the past which was a direct result of his work" and that appellant's "current psychiatric disability is aggravated by the continued conflict."

In a letter dated May 29, 1998, appellant's representative requested reconsideration and submitted evidence and legal arguments in support of his request.

In a July 21, 1998 merit decision, the Office denied appellant's request for reconsideration on the basis that none of the evidence submitted provided any corroborating evidence to support appellant's allegations of error and abuse on the part of the employing establishment. The Office thus found the evidence insufficient to warrant modification of the prior decision.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

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

³ Donna Faye Cardwell, 41 ECAB 730 (1990).

employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ 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.⁵

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.⁶ 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.⁷

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.⁸ 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.⁹

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave, and improperly assigned work duties, 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.¹⁰ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹¹ 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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹¹ *Id.*

Board has examined whether the employing establishment acted reasonably.¹² Appellant has not demonstrated that the employing establishment committed error or acted abusively in the administration of a personnel matter. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Regarding appellant's allegation of denial of promotions, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹³ Thus, appellant has not established a compensable employment factor under the Act in this respect.

The Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under the Act unless the refusal constitutes error or abuse.¹⁴

In the present case, appellant has identified compensable factors of employment with respect to coworkers calling him names and that his coworkers did not want him as a supervisor. Mr. Traylor commented on January 7, 1994 telling him to "shut up" and get a life, and being called an "asshole" by Mr. Callahan. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁵

The Board finds that, while appellant established compensable employment factors, he did not meet his burden of proof to establish that his emotional condition was work related because he did not submit rationalized medical evidence explaining how these factors of employment caused or aggravated his emotional condition. By letter dated May 30, 1995, the Office informed him of the type of medical evidence necessary to establish his claim which was to include a comprehensive medical report from his physician citing the specific work factors or incidents and explain how these contributed to his condition. The only medical evidence submitted consists of treatment notes covering the period February to September 1995 by Dr. Hedberg and reports dated February 20, 1996 and June 9, 1997 from Dr. Pang. While both Drs. Hedberg and Pang diagnose major depression due to work stress and the conflict at work, none contain a rationalized medical opinion relating appellant's condition to the specific work factors found compensable in this case.¹⁶ Neither physician explains why specific factors of

¹² See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹³ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹⁴ *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

¹⁵ See *Isabel R. Pumpido*, 51 ECAB ____ (Docket No. 98-784, issued February 2, 2000); *William P. George*, 43 ECAB 1159, 1168 (1992).

¹⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

employment caused or aggravated appellant's condition. Thus, the Office properly determined that appellant had not established that his depression or situational anxiety syndrome was causally related to an accepted factor of employment.

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

Dated, Washington, DC
January 2, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member