U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM L. TANNER and U.S. POSTAL SERVICE,
NORTHSIDE STATION, Richmond, VA

Docket No. 99-631; Submitted on the Record;
Issued January 19, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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

On July 11, 1995 appellant, then a 52-year-old letter carrier, filed a notice of occupational disease alleging that his mental illness was caused by a pattern of harassment at the three post offices where he worked: Westhampton, Southside and Northside.

Appellant stated that his emotional condition was aggravated by a June 6, 1994 letter of warning regarding an April 16, 1994 incident. He told his supervisor at Westhampton station, Cindy Wright, that he did not take lunch breaks so he could complete his work. Ms. Wright then said that appellant "look[e]d like [he] ha[d] two lunches every day." Appellant thought she was "kidding and kidded back, saying "I [am] not as fat as you are." She screamed at the top of her voice, "you can[not] talk to me that way. You [are] beneath me. You have no rights." After a discussion between Ms. Wright, appellant and the shop steward, Ms. Wright informed appellant that she would issue him a letter of warning and he alleged that she refused to let him leave to see his physician.

Appellant also alleged that after he transferred to the Southside station during the summer of 1994,[1] he experienced harassment and retaliation for not being a union member and that his magnetic badge and vehicle keys were tampered with on several occasions. Further, appellant alleged that following his January 1995 voluntary transfer to Northside he was threatened by residents on his mail route on January 7, 1995, "forcing" him to resign effective January 13, 1995.

Officials at the three post offices where appellant worked submitted statements refuting his allegations.

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[1] Appellant bid on and won a position at Southside station because he desired a different route.

In an October 24, 1995 statement, Ms. Wright, appellant's supervisor at Westhampton, noted that his duties consisted of a five-minute vehicle inspection, three hours of casing mail and approximately four and a half hours of delivering mail. Appellant was allowed two 10-minute breaks, a half-hour lunch break and bathroom breaks as needed. She explained that appellant's assigned route was not high volume or high turnover and was rated at requiring fewer than eight hours to complete. Ms. Wright stated that appellant was under no pressure other than to "maintain a minimum performance standard" and was not treated any differently than other employees. She added that appellant had often stated his desire to pursue real estate as a full-time career and was involved in that industry while a postal employee.

In an August 23, 1995 note, Arnold Navarre, a supervisor at Southside stated that appellant did not inform him of any harassment due to his nonunion status during his work there from September 3 through December 1994.

In a September 6, 1995 statement, Willie J. Covert, also a supervisor at Southside[2] stated that casing the mail on appellant's route took approximately three hours and delivery took four to five hours. He noted that "whenever there was excess mail [appellant] was authorized overtime or given help." Mr. Covert added that appellant had reported his vehicle keys were missing twice but on one occasion they turned out to be in appellant's pocket. He remembered replacing appellant's magnetic badge once, but it did not appear to be damaged.

In an August 15, 1995 letter, a manager at the Northside station noted that appellant was assigned there on January 7, 1995 and "quit" on January 9, 1995 without informing "management that there was any mitigating circumstances for his action. [Appellant] did not say he was sick, stressed or under any duress."

By decision dated April 17, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. He disagreed with this decision and in a May 9, 1996 letter requested an oral hearing. By decision dated October 9 and finalized October 10, 1996, the Office hearing representative set aside the April 17, 1996 decision, finding that the Office failed to consider additional evidence timely submitted by appellant. The hearing representative remanded the case to the Office for further development and a *de novo* decision.

By decision dated May 8, 1997, the Office denied appellant's claim on the grounds that he failed to establish that his emotional condition occurred in the performance of duty. The Office found that the June 1994 letter of warning was an administrative matter not in the performance of duty and that no error or abuse was shown. The Office further found that appellant had not established as factual that he was threatened by residents on his route on January 7, 1995, that he was forced to resign on January 13, 1995 due to pressure from supervisors or his nonunion status, that Ms. Wright refused in April 1994 to grant him leave to attend a physician's appointment or that he "was constantly working with no lunches or breaks."

[2] Mr. Covert noted an occasion where appellant did not deliver all the mail assigned to him and that appellant had "two official discussions, one for leaving the mail and the other for delaying first class mail."

Appellant disagreed with this decision and requested a review of the written record by the Office's Branch of Hearings and Review.[3]

By decision dated October 28 and finalized October 29, 1998, the Office hearing representative affirmed the Office's May 8, 1997 decision. The hearing representative found that appellant had not established that he was harassed or discriminated against, that the June 6, 1994 letter of warning was issued improperly or that his work schedule and assignments constituted administrative error or abuse.

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

To establish entitlement to benefits under the Federal Employees' Compensation Act,[4] a claimant must support his allegations concerning his emotional condition with probative and reliable evidence. A claimant's perceptions and feelings regarding work factors, in the absence of corroborating evidence, are not compensable.[5] When working conditions are alleged as factors in causing 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] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard.

In this case, the Office accepted as factual only that appellant was issued the June 6, 1994 letter of warning regarding the April 16, 1994 incident with his supervisor, Ms. Wright. The Board finds that the letter of warning was an administrative matter unrelated to appellant's regular or specially assigned work duties and thus not falling within the coverage of the Act.[7]

Disciplinary actions are administrative function of the employer and not a duty of the employee.[8] However, 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.[9]

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[3] In a May 15, 1997 letter, appellant requested an oral hearing, initially scheduled for January 28, 1998. In an August 13, 1998 letter, appellant's attorney requested a review of the written record in lieu of an oral hearing. Appellant submitted additional evidence accompanying a September 8, 1998 letter.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[6] *See Barbara Bush*, 38 ECAB 710 (1987).

[7] *See Jimmy Gilbreath*, 44 ECAB 555 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

[8] *Id.*

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

Appellant has not submitted sufficient evidence to corroborate his allegation that the employing establishment erred or acted abusively with regard to the letter of warning. His version of events varies significantly from the account provided by Ms. Wright, his supervisor. While appellant claims that Ms. Wright "screamed" at him, the letter describes an April 16, 1994 incident in which appellant began "shouting loudly, disrupting the workroom floor," when instructed to "carry a 30-minute pivot to capture the undertime on [his] route…." In an official discussion with a shop steward and Ms. Wright following the incident, appellant "again exploded in a rage," requested leave, which was disapproved and then "again disrupted the workroom floor with loud shouting." Appellant alleged that he had an "accident" earlier that day and Ms. Wright took appellant to a physician. While appellant indicated that coworkers witnessed the April 16, 1994 incident, he provided no statements supporting his version of events.

Appellant alleged that he felt pressured and harassed by Ms. Wright and other supervisors and coworkers. For harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[10]

In this case, appellant did not submit sufficient evidence to corroborate his accounts of harassment. As noted above, the only incident established as factual, though not compensable, is the June 6, 1994 letter of warning, which is an administrative disciplinary matter unrelated to appellant's assigned duties, without evidence of error or abuse.

Appellant failed to submit evidence to corroborate any of the other incidents of alleged harassment. In her October 24, 1995 statement, Ms. Wright stated that appellant was not singled out or treated differently than other employees. In his August 23, 1995 note, Mr. Navarre stated that appellant did not report any coworker harassment or that he had been called a "scab." In his September 6, 1995 statement, Mr. Covert noted that appellant had not complained of harassment and that there was no evidence that his keys or magnetic badge were tampered with. Therefore, the Board finds that appellant has not established that he was harassed at the employing establishment.

Appellant claimed that his emotional condition was due to overwork and having to work "off the clock" and during breaks to complete his assigned duties. While overwork may be a compensable factor of employment,[11] the evidence in this case is insufficient to establish that appellant was in fact over-worked. Rather the evidence indicates that appellant was given ample time in which to complete his work assignments. At Westhampton, Ms. Wright described appellant's duties as comprising seven and a half hours of work, with two 10-minute breaks and a half-hour lunch break. She explained that appellant's route was rated at fewer than eight hours, and that the mail volume was not high. At the Southside station, Mr. Covert submitted a

[10] *See Mary A. Sisneros*, 46 ECAB 155 (1994).

[11] *Sandra F. Powell*,45 ECAB 877 (1994); *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

September 6, 1995 statement describing duties lasting from seven to eight hours, noting that "whenever there was excess mail [appellant] was authorized overtime or given help." He did not allege overwork at the Northside station. Accordingly, appellant has not established that he was overworked.[12]

Appellant also alleged that he was threatened by residents on his mail route on January 7, 1995, "forcing" him to resign. However, he did not submit evidence corroborating this incident. In a January 13, 1995 exit interview form, appellant stated that he resigned due to "age, other opportunities, safety, personal health," but did not mention a January 7, 1995 confrontation with residents along his route. In an August 15, 1995 letter, a manager at the Northside station noted that appellant "quit" on January 9, 1995 without informing management of the alleged incident. Thus, appellant has failed to establish that the January 7, 1995 incident occurred.

Consequently, appellant has failed to establish that he sustained an emotional condition in the performance of duty, as he did not establish any compensable factor of employment.[13]

In support of his claim, appellant submitted a newspaper clipping and medical literature on tinnitus, paranoia and vascular disease. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[14]

Appellant also submitted documents relating to a January 29, 1997 decision by an administrative law judge finding appellant disabled under the Social Security Act beginning on December 31, 1994 due to "small vessel ischemic disease with a history of multiple strokes, tinnitus, a bilateral hearing loss, chronic venous insufficiency, an organic brain syndrome, major depression, recurrent, and an obsessive-compulsive disorder." Similarly, he submitted a January 16, 1996 letter from the Office of Personnel Management (OPM) approving his application for disability retirement. However, an administrative law judge's decision that appellant was disabled under SSA has no evidentiary value in this case because the Board has held that entitlement to benefits under one act does not establish entitlement to benefits under FECA. In determining whether an employee is disabled under FECA, the findings of the SSA are not determinative of disability. SSA and FECA have different standards of medical proof on the question of disability. Under FECA, for a disability determination, appellant's injury must be shown to be causally related to an accepted injury or factors of his federal employment.

[12] Appellant also attributed his condition to exposure to loud noises at the Westhampton station which aggravated preexisting tinnitus and hearing loss. However, the Office did not develop appellant's claim for any condition other than an emotional condition.

[13] As appellant failed to establish a compensable factor of employment, the medical evidence of record need not be addressed. *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

[14] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

Under SSA, conditions which are not work related may be considered in rendering a disability determination.[15]

Appellant also submitted June and July 1995 forms related to an Equal Employment Opportunity grievance based on sex, age, race and handicap, alleging that Ms. Wright refused to grant him sick leave on April 16, 1994. While the employing establishment accepted the issue regarding denial of sick leave 11 days in advance of a scheduled appointment, and dismissed appellant's other complaints, there is no final decision regarding this grievance in the record.

The decision of the Office of Workers' Compensation Programs dated October 28 and finalized October 29, 1998 is hereby affirmed.[16]

Dated, Washington, DC
January 19, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[15] *Daniel Deparini*, 44 ECAB 657 (1993).

[16] Subsequent to the Office's decision appellant submitted additional evidence. The Board has no jurisdiction to consider this new evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).