U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES CAPRA and U.S. POSTAL SERVICE,
SOUTH JERSEY DISTRIBUTION PLANT, Bellmawr, NJ

Docket No. 00-1581; Submitted on the Record;
Issued March 12, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On November 30, 1999 appellant, then a 51-year-old mailhandler technician, filed a claim for an occupational disease alleging that on November 12, 1999 he first realized that his stress disorder was caused or aggravated by factors of his employment.

By decision dated March 28, 2000, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant 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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.[1]

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

Perceptions and feelings alone are not compensable. 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 factors of his federal employment.[2] To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[3]

In a November 30, 1999 narrative statement, appellant alleged that he was harassed by his supervisors to accept three "rehab[ilitation]" job offers. He claimed that Richard Wiseman, his supervisor, told him that he would lose his job if he did not accept the job offer. Appellant further claimed that Joseph Vennera, an employing establishment manager of distribution, ordered him to sign the job offer. He also alleged harassment in that the job offers required a change in his work hours.

The Board has held that actions of an employee's supervisors or coworkers, which the employee characterizes as harassment, may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability, 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.[4]

In response to appellant's allegation that he was harassed by his supervisors to accept the job offers, William R. Hanna, an employing establishment injury compensation specialist, stated in a December 10, 1999 letter controverting appellant's claim that "[d]uring the past year the agency has made several good faith efforts to place [appellant] in [a] permanent modified position. Mr. Hanna also stated that "management has tried to work with [appellant] and his physician to design a rehab[ilitation] job offer to meet his needs, only to be disapproved by [appellant]."

In a January 23, 2000 e-mail message, Mr. Vennera stated that he was not aware of appellant's claim, but that the only thing he could remember about appellant was that "we tried on several occasions to give a rehab[ilition] assign[ment], which he refused."

Appellant has not established that his supervisors harassed him. He did not submit any evidence to corroborate his allegation. Further, Mr. Hanna and Mr. Vennera have contradicted appellant's allegations. The evidence of record, therefore, is insufficient to establish that appellant was subjected to harassment from his supervisors.

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

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

[4] *William E. Seare*, 47 ECAB 663 (1996).

Even though appellant has not established that harassment occurred, the case must be reviewed to determine whether the incidents described, as harassment constituted factors of employment, regardless of whether there was, in fact, harassment.[5] The proposal to change appellant's work hours constitutes an administrative action and, therefore, is not a compensable factor of employment. 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 Board has examined whether the employing establishment acted reasonably.[6]

Mr. Vennera stated in his January 23, 2000 e-mail message that "[i]n reviewing our staffing we realized that in order to expedite delivery of damaged mail the hours should be adjusted to meet the new time schedule. All the positions were then revamped commenserate [sic] to the Letter aisle positions and in line with the DOV for South Jersey mail."

In a January 24, 2000 letter, Mr. Hanna further explained:

> "During the past year the dispatching of mail from the processing plant to the associate offices have all been move[d] up to a earlier time under the new OPTIMA program in order to provide better service to our customers. [Appellant] has refused several rehab[ilitation] job offer[s] (all within his medical restrictions), providing no rational reason why. All Tour -- 1 processing personnel hours have been moved up to match the dispatch schedule under the OPTIMA program. At no time did the agency harass [appellant] but as Mr. Vennera states tried to match the staffing to meet the dispatch schedule. As it would not be practical to have one employee sitting alone in the letter aisle for 2½ hours after all other personnel are gone."

In addition, Mr. Hanna submitted a February 18, 2000 letter indicating that there was no 11:00 p.m. start time except for maintenance due to the new dispatch requirements. Mr. Hanna noted that appellant's treating physician, Dr. Carl A. Vitola, a Board-certified family practitioner, stated that appellant takes his medication upon awakening before beginning his work tour and he did not state that appellant's medication needed to be taken at a certain time. He also noted that the side effects were completely eliminated by 10:00 p.m. Mr. Hanna noted that appellant had been working with an 8:05 p.m. start time since returning to work on January 17, 2000 with no known ill side effects. He further stated that during the last year the employing establishment has had to change numerous start times of employees in order to implement the new OPTIMA program.

The e-mail message from Mr. Vennera and the letters from Mr. Hanna establish that the employing establishment did not commit error or abuse regarding appellant's work hours. Appellant has not submitted any evidence to establish that the employing establishment erred or

[5] *See Stanley Smith, O.D.*, 29 ECAB 652 (1978).

[6] *See Richard Dube*, 42 ECAB 916 (1991).

acted abusively with regard to the change in his work hours. Thus, appellant has not established a compensable employment factor under the Act in this respect.[7]

Inasmuch as appellant has not submitted sufficient evidence that his supervisors threatened him to accept job offers or made changes in his work hours as an effort to harass him, he has not established a compensable factor of employment under the Act. Therefore, it is unnecessary to address the medical evidence in this case.[8]

The March 28, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 12, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[7] *See Frederick D. Richardson*, 45 ECAB 454 (1994).

[8] *Garry M. Carlo*, 47 ECAB 299, 305 (1996).