U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL J. LOESCH and U.S. POSTAL SERVICE,
POST OFFICE, Syosset, NY

Docket No. 02-983; Submitted on the Record;
Issued December 12, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition, with physical symptoms, due to factors of his federal employment.

Appellant, a 45-year-old letter carrier, filed a notice of traumatic injury on January 6, 2001 alleging that he developed an emotional condition with physical symptoms due to constant harassment by his supervisor, Joseph S. Tracz. The Office of Workers' Compensation Programs requested additional factual and medical evidence by letter dated February 5, 2001. By decision dated May 22, 2001, the Office denied appellant's claim. Appellant requested a review of the written record on June 11, 2001. By decision dated October 26, 2001, the hearing representative found that appellant had established a compensable factor that he was improperly denied a route inspection. However, he concluded that appellant failed to meet his burden of proof as he did not submit sufficient medical evidence to establish a causal relationship between his diagnosed condition and his accepted employment factor.

The Board finds that appellant has failed to establish that he developed an emotional condition, with physical symptoms, due to his federal employment.

To establish appellant's claim that he has sustained an emotional condition in the performance of duty, appellant must submit medical evidence establishing that he has an emotional or psychiatric disorder and factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition.[1]

In considering factual evidence, the Board has held that 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

[1] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Appellant stated that the employing establishment improperly denied his request for route inspections. Appellant requested a route inspection on November 27, 2000 noting that he had been accused of a work deficiency. In a grievance settlement dated February 14, 2001, it was concluded that the employing establishment had no basis for denying appellant's request for a special inspection. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[3] In this case, the evidence establishes that appellant was entitled to a route inspection, an administrative function of the employing establishment and that the employing establishment improperly denied this request. Therefore, appellant has established a compensable factor of employment.

On February 22, 2001 appellant submitted medical evidence supporting his return to work on February 26, 2001. On February 23, 2001 the employing establishment scheduled a fitness-for-duty examination on February 28, 2001. A grievance settlement dated May 22, 2001 made the finding that the employing establishment had delayed appellant's return to work and that, therefore, appellant was entitled to use administrative leave on February 26 and 27, 2001, rather than his sick leave. Leave usage is considered to be a personnel matter and is not a compensable factor of employment unless error or abuse is established.[4] The grievance settlement established that the employing establishment erred in requiring appellant to use two additional days of sick leave and this constitutes a compensable factor of employment.

Appellant received a letter of warning on December 7, 2000 finding that he failed to following instructions as he was smoking in a nonsmoking area, that he utilized an unauthorized break and that he was not in proper uniform. This letter of warning was reduced to a discussion on April 12, 2000 in an April 12, 2001 settlement agreement. Discipline is an administrative function of the employing establishment. The letter of warning was reduced to a discussion. However, the Board has held the mere fact that a personnel action was later modified or rescinded, does not in and of itself, establish error or abuse.[5]

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[2] *Lillian Cutler,* 28 ECAB 125, 129-31 (1976).

[3] *Martha L. Watson,* 46 ECAB 407 (1995).

[4] *Elizabeth Pinero,* 46 ECAB 123, 130 (1994).

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

Appellant attributed his emotional condition to the employing establishment's change in his start time from 6:30 a.m. to 7:30 a.m. on the grounds that his productivity had dropped. He stated that this change went into effect on November 24, 2000. On January 30, 2001 this grievance was denied on the grounds that appellant's productivity had dropped and that there was no other means of correcting this deficit. As there is no evidence substantiating appellant's claim that the employing establishment erred in changing his start time, an administrative function, he has failed to establish that this is a compensable factor of employment.

Finally, appellant alleged that the employing establishment was harassing him by constant observation and discipline as well as the denial of auxiliary assistance. Appellant also alleged that those assigned to help to case his mail did not do so properly and that Mr. Tracz accused him of "fanning mail." Appellant submitted a statement signed by coworkers dated January 5, 2002 that Mr. Tracz observed appellant to the point of harassment, that he timed appellant, that Mr. Tracz disciplined appellant, that he had other supervisors watch appellant and that he moved appellant's case closer to his desk. In a statement dated January 8, 2001, appellant's union representative alleged that appellant was under constant scrutiny on a daily basis.

Mr. Tracz submitted a statement on November 25, 2000 that appellant's productivity had dropped as he was "not throwing over seven letters per minute." He scheduled a mandatory meeting on December 6, 2000 to discuss appellant's fall in productivity. He alleged that appellant called him a liar and that appellant asserted that he was not doing anything different, merely getting older and that he was tired of being watched. On December 14, 2000 Mr. Tracz conducted an office discussion with appellant on the grounds that appellant was not working to his demonstrated capacity. Furthermore, the employing establishment stated that appellant bid on a new route, which he knew would result in his case being moved nearer to Mr. Tracz, that other employees had received a change in start times and that appellant's productivity had dropped. The grievance settlement upheld the employing establishment's right to observe work performance.

The Board has held that the handling of discipline and monitoring of activities at work is generally related to employment as administrative functions of the employing establishment and not duties of the employee. Appellant has not submitted sufficient specific factual evidence to establish error or abuse on the part of the employing establishment in these actions.

Appellant also alleged harassment and discrimination based on the above-mentioned alleged employment factors. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[6] Although appellant has established two compensable factors of employment, he has not established a pattern of administrative abuse such that it would rise to

[6] *Alice M. Washington*, 46 ECAB 382 (1994).

the level of harassment or discrimination. The statement from his coworkers is not sufficient to meet his burden of proof in establishing harassment as it does not provide sufficient detail of time and frequency of the events which appellant felt harassed him. Therefore, he has not submitted any probative and reliable evidence of harassment.

In the present case, appellant has identified a compensable factor of employment with respect to the denial of special inspection and with respect to the impediment of his speedy return to work requiring additional leave usage. Appellant must also submit rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

In support of his claim, appellant submitted a note dated February 16, 1996 from Dr. Steven J. Eisner, an osteopath, diagnosing anxiety, acute based on inability to cope after long-standing personality conflicts at work. He recommended further evaluation. On January 15, 2001 Dr. Eric C. Last, an osteopath, found that appellant had a normal physical examination and that he claimed stress as a result of his work environment. He recommended further evaluation. Neither of the these physicians provided a history of injury to include the accepted employment factors nor a clear opinion that these accepted factors resulted in either an emotional or physical condition. Therefore, these reports are not sufficient to meet appellant's burden of proof.

Appellant also submitted several reports from a social worker and a note from a nurse practitioner. A social worker[8] is not a physician for the purposes of the Act[9] and her reports do not constitute medical evidence.[10] A nurse practitioner[11] is also excluded from the definition of a physician under the Act and cannot provide the necessary medical evidence to support appellant's claim.

[7] *Id.*

[8] *Frederick C. Smith*, 48 ECAB 132, 134 n.5 (1996).

[9] 5 U.S.C. §§ 8101-8193, 8101(2).

[10] *Arnold A. Alley*, 44 ECAB 912, 921(1993).

[11] *Joe L. Wilkerson*, 47 ECAB 604 n.1 (1996).

The October 26 and May 22, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 12, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member