U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAMONTE SIMPSON and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

Docket No. 00-1286; Submitted on the Record;
Issued February 26, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

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 February 20, 1999 appellant, then a 48-year-old modified letter carrier, filed an occupational disease claim alleging that he suffered from consequential depression with job-related stress due to his cervical lumbar disc injury.[1] He stated that he became depressed due to a demotion, a reduction in pay and a craft and location change by the employing establishment, coupled with long periods of helplessness and the inability to sleep. Appellant further stated that these actions were taken in retaliation to a complaint he filed with the Equal Employment Opportunity Commission (EEOC).

By decision dated April 20, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a May 13, 1999 letter, appellant requested an oral hearing before an Office representative.

By decision dated January 7, 2000, the hearing representative affirmed the Office's 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 illness has some connection with the employment, but nevertheless does not come within the coverage

[1] Appellant filed a claim alleging that he hurt his back on April 1, 1987. The Office of Workers' Compensation Programs accepted appellant's claim for aggravation of left shoulder arthritis, aggravation of degenerative cervical arthritis and mild disc protrusions at C3-4, C4-5 and C5-6. Appellant stopped work in November 1996.

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.[2]

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.[3] 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.[4]

In this case, appellant attributed his emotional condition to a demotion, reduction in pay and craft and location changes by the employing establishment. He stated that he was demoted to a part-time flexible distribution clerk and that he was offered a position with a "saved salary rate." Appellant further stated that coworkers, Tracy Twiggs and Isaiah Hall, were not subjected to changes in their pay and employment status.

Appellant filed a grievance against the employing establishment alleging that he was not paid at the correct pay rate in his new position. He filed a grievance in response to his reassignment to his former administrative duties by his supervisor, Ronald Gibson, because he could not case mail with his left hand, alleging violation of a September 13, 1995 settlement agreement authorizing him to case mail for his group.

Appellant contended that he experienced severe back pain on November 1, 1996, but that employing establishment supervisors denied his request for leave and made derogatory comments about him.

Appellant alleged that he received a letter dated March 25, 1997 from the employing establishment for his absence from work without official leave and he subsequently received a notice of removal dated May 30, 1997. He contended that he went to see Bernard King, a plant manager, about the March 25, 1997 letter, but that he was not allowed to see him. Appellant stated that Mr. Kings' statement in his May 30, 1997 letter, that he did not respond to the March 25, 1997 letter was untrue.

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

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

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

Appellant contended that he was not given sufficient notice by the employing establishment regarding his appearance at a scheduled arbitration hearing. He stated that on the morning of July 21, 1997 he received a telephone call from his wife around 7:45 a.m. concerning an arbitration hearing scheduled for 9:00 a.m. that day. Appellant further stated that when the employing establishment's labor representative, Kennoa Dixon, asked his wife, whether they knew about the hearing, she responded that they had not received any notice.

The demotion and reassignment of an employee to a different position,[5] reduction in pay, filing of grievances,[6] use of leave,[7] disciplinary matters such as, the issuance of letters of removal,[8] and failure to receive notice about the arbitration hearing constitute administrative or personnel matters. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.[9]

Regarding appellant's reassignment, Mr. Gibson noted appellant's injuries and physical restrictions in an undated narrative statement. He explained that appellant was given a job performing duties such as, answering the telephone because the duties involved in casing mail encompassed appellant's physical restrictions. Mr. Gibson stated that other limited-duty employees were also given modified jobs in different work locations.

A May 8, 1997 settlement agreement indicated that the parties would review the "saved salary rate" that was associated with appellant's new position and determine whether appellant was entitled to any additional pay. The agreement, however, does not establish that the employing establishment acted in error or abusively in establishing appellant's new pay rate.

Regarding the grievances filed by appellant pertaining to his reassignment, the record contains an April 29, 1998 EEOC decision which found that the employing establishment did not discriminate against appellant in terminating his temporary limited-duty job offer and assigning him to a permanent limited-duty position. The employing establishment issued a May 28, 1998 decision concurring with the EEOC decision and thus closed appellant's case.

Milton Norman, an employing establishment supervisor, indicated in a March 29, 1999 note that he did not recall appellant's request to go home on November 1, 1996 or any remarks he made about appellant.

In an April 8, 1999 note, Mr. King stated that appellant did not personally respond to the March 25, 1997 proposed notice of removal, but that appellant sent him two documents on two separate occasions in support of his absence. He indicated that he never saw appellant and that

[5] *James W. Griffin*, 45 ECAB 774 (1994).

[6] *Diane C. Bernard*, 45 ECAB 223 (1993).

[7] *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

[8] *See Barbara E. Hamm*, 45 ECAB 843 (1994).

[9] *Id.*

appellant resolved the issue with Lee Tucker, an employing establishment employee. Although Debra A. Benedict, an employing establishment employee, stated in an April 13, 1999 note that appellant came to the employing establishment on March 4, 1997 to drop off a letter from his treating physician regarding his current status, she did not state whether appellant was allowed to discuss the March 25, 1997 letter with Mr. King.

Based on the statements of Mr. Gibson and Mr. Norman, and the settlement agreements and EEOC decision, there is no evidence of record establishing that the employing establishment erred or acted abusively in reassigning appellant, denying appellant's request for leave and issuing a letter of removal. The Board finds that since there is no evidence of record establishing that the employing establishment erred or acted abusively in handling the above matters, appellant has failed to establish a compensable employment factor under the Act.

Appellant contended that the employing establishment's failure to adhere to his medical restrictions by not providing him with a lumbar support chair to case mail caused his emotional condition. If substantiated by the record, appellant's allegation would constitute a compensable factor of employment.[10] The record contains a May 1999 letter from Dan Rupp, president of appellant's local labor union, indicating that appellant called the union office to complain that he was not provided with a lumbar chair. Mr. Rupp stated that he and Robert Harrigan, former president of appellant's local labor union, went to the employing establishment to observe the situation and found that appellant did not have a lumbar chair. He noted that they asked the employing establishment why appellant was not being provided with a lumbar chair and the response that it did not have enough chairs and the ones it had were already being used. Mr. Rupp stated that they met with Sally Webber, manager of injury compensation and someone they believed to be the Postmaster to make them aware that appellant was not being provided with the chair he needed.

In a June 1999 statement, Mr. Harrigan noted grievances filed by appellant against the employing establishment. He noted discussions with Mr. Gibson regarding appellant and other limited-duty employees' need to have a special chair to perform their work duties. Mr. Harrigan further noted that although enough special chairs were not available, additional chairs were ordered. He made a general allegation that appellant was harassed and treated differently than his coworkers by the employing establishment.

Lillie Ann Oden, an employing establishment injury compensation specialist, stated in an April 16, 1999 letter that when appellant reported to work on October 26, 1996,[11] the regular supervisor was absent and that the supervisor filling in was not aware of appellant's need for a lumbar chair. Ms. Oden noted, however, that when a chair became available during the course of the night, appellant was allowed to use the chair. She further noted that during the course of eight hours, appellant did not stand unless he chose to do so. Ms. Oden explained that when there is a shortage of chairs due to an overlap of shift changes or broken chairs, limited-duty employees are allowed to sit in the break area or the cafeteria until a chair becomes available. She stated that the safety office orders chairs with back support on an as needed basis. A

[10] *Diane C. Bernard*, 45 ECAB 223, 227 (1993); *Minnie L. Bryson*, 44 ECAB 713 (1993).

[11] Appellant was reporting to his new assignment.

memorandum concerning Ms. Oden's telephone call with the Office on April 20, 1999 reiterated her explanation about the lack of suitable chairs on the day appellant reported to work, the employing establishment's policy about accommodating its employees on limited duty and that appellant was not forced to perform his work duties standing.

Similarly, Edward S. Thornton, an employing establishment employee, indicated in an April 15, 1999 statement that the supervisor directly in charge of appellant was not aware that appellant needed a lumbar chair. Mr. Thornton stated that appellant made the supervisor aware of his need. Further, he stated that although the limited-duty job offer mentioned the need for the chair, the direct supervisor at that time and location did not have the job offer and was not aware that a chair should have been provided to appellant. Mr. Thornton noted that subsequent to this event, the injury compensation office coordinated the purchase of additional chairs to accommodate employees with restrictions.

Although the statements of Mr. Rupp and Mr. Harrigan indicated that the employing establishment did not have an adequate supply of chairs to accommodate appellant's physical restrictions, the statements of Ms. Oden and Mr. Thornton established that the employing establishment took the necessary steps to accommodate appellant's physical restrictions. Further, their statements establish that appellant was not required to perform his work duties until a lumbar chair was made available to him. Thus, there is no evidence that the employing establishment erred or acted abusively in accommodating appellant's physical restrictions.

Appellant alleged that Mr. Gibson ordered him to sign an offer for the position of modified letter carrier before the deadline and threatened to terminate his employment if he failed to do so. Actions of an employee's supervisor, which the employee characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.[12] Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[13] An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.[14] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.[15]

Mr. Harrigan's addendum statement indicated that Mr. Gibson pressured appellant to sign the job offer prior to the deadline and threatened to terminate his employment if he did not do so. Mr. Harrigan, however, did not state that he actually witnessed Mr. Gibson pressuring appellant to sign the job offer or threatening appellant with the loss of his job if he did not sign the offer. In an undated statement, Mr. Gibson indicated that appellant's allegation was untrue. He stated that the job offer was not generated by him, but rather, by the injury compensation office and

[12] *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

[13] *See Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

[14] *William P. George*, 43 ECAB 1159 (1992).

[15] *See Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

that if termination was in order, it was not his call. Thus, appellant has failed to establish that Mr. Gibson harassed him.

As appellant has not established any compensable factors of his federal employment that he implicates in causing or contributing to the development of his emotional condition appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.[16]

The January 7, 2000 and April 20, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 26, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

[16] As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be reviewed in this case.