

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARL L. HICKS and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 03-696; Submitted on the Record;
Issued May 15, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On February 23, 2001 appellant, then a 56-year-old maintenance worker, filed a claim alleging that he developed an emotional condition and an anxiety disorder from filing paperwork, physicians' reports and statements and from not obtaining timely authorization for surgery for a knee condition, for which he had filed a separate claim.¹ He stopped work on February 2, 2001 and did not return.

In support of his claim appellant submitted a February 23, 2001 statement concerning his problems with the Office of Workers' Compensation Programs alleging that he had to wait 6 months for authorization for right knee surgery, that he did not get the requested knee brace for 18 months and that the lag in time caused damage to his left knee. He also alleged that he reinjured his right knee a second time on February 23, 2000 that he again had a long wait for surgery and that his left knee was, therefore, damaged and he alleged that he developed an emotional condition and an anxiety disorder as a result.

Appellant additionally submitted two psychiatric reports dated February 8 and March 14, 2001 from Dr. Leonard D. Elkun, a Board-certified psychiatrist, which stated that appellant remained totally disabled due to the depth and intensity of his depressive disorder and generalized anxiety disorder.

By letter dated May 11, 2001, the Office requested additional information including a statement of employment factors implicated in the development of his emotional condition and rationalized medical evidence supporting causal relation.

¹ Claim No. 100456928.

In response appellant submitted several statements, a copy of a grievance and a medical report.

In an undated statement to his congressional representative, appellant alleged that he filed an age discrimination and sexual harassment charge against a carrier foreman and that he was subjected to many documented acts of unfair labor practices, including a three-month removal in 1998 and other acts of blatant discrimination. Appellant alleged that these acts caused tremendous pain and stress, a heart attack in October 1995, a bankruptcy in 1996 and a divorce in 1997 and he claimed that he went through a year of counseling in 1998 due to employment establishment disruption of his ability to support his family.

In a May 28, 2001 statement, appellant claimed that he was sexually harassed by his supervisor by being followed to the washroom and in the form of discipline letters and suspensions, that his required surgery was delayed, that he was not given overtime and that he needed counseling for a year.

By decision dated January 30, 2002, the Office rejected appellant's claim finding that he failed to implicate any compensable factor of his employment. The Office found that appellant had failed to provide sufficient evidence regarding his multiple claims of harassment, that reactions regarding pursuit of his right knee claim did not arise in the performance of duty, that overtime was an administrative matter and that letters of discipline and suspensions were also not considered to arise in the performance of duty.

Appellant disagreed with the January 30, 2002 decision and requested an oral hearing before an Office hearing representative. In support he submitted an August 28, 2002 statement, in which he claimed that his emotional condition was related to his knee condition, that he was not given appropriate treatment for his knee condition, which caused his emotional condition, that he was harassed by being given letters of warning, that the postal police were called on him, that he was suspended without cause, that he was removed from service illegally and that he and other custodians had to sign in on a sheet every half hour, but that on days he did not work the other custodians did not have to sign in. Appellant alleged that his paychecks were short, which was a form of harassment, that he was denied overtime, that he required psychiatric counseling and that he was having financial difficulties.

The hearing was held on October 24, 2002 at which appellant testified. Appellant testified that he suffered emotional and financial distress as a result of the delays in getting his other workers' compensation claims approved and surgery authorized. He also claimed that he had filed several grievances and won those grievances, but he did not present evidence supporting this claim.

On November 27, 2002 appellant submitted a two-page summary and analysis form, which appeared to be part of a larger document, although the exact nature of the document could not be determined from the information received. The form discussed several examples of alleged harassment in 1997 and 1998 cited by appellant, but stated it had been determined that the other custodial personnel were required to follow the same procedures as appellant.

Appellant also submitted a psychosocial assessment signed by a licensed therapist and a statement, in which he claimed that he was not allowed to work overtime as two other custodians were and that all of their starting times were changed, which he considered to be blatant harassment.

By decision dated December 13, 2002, the hearing representative affirmed the January 30, 2002 decision finding that appellant had failed to implicate any compensable factor of his employment. The hearing representative found that factors not accepted as being factual due to no corroboration, were appellant's claims of harassment by his supervisor, his allegation that two different supervisors stated that they were going to "get him," and his claim that a supervisor followed him into the washroom. She found that being required to sign in on a sheet was an administrative requirement and was not related to appellant's regular or specially assigned duties, that his desire for overtime was similarly not related and that a delay in the processing of his knee claim bore no relation to his day-to-day or specially assigned duties. The hearing representative lastly found that disciplinary letters of warning and suspensions were not compensable factors of employment.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.²

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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 Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant.⁴

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁴ *Id.*

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Act. Generally, speaking when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁵ Conversely, if the employee's emotional reaction stems from employment matters, which are not related to his or her regular or specially assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁶ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁷

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.⁸ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹⁰ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.¹¹

⁵ *Id.*; *supra* note 3; see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Id.*

⁷ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁸ See *Barbara Bush*, 38 ECAB 710 (1987).

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹¹ See *Donna Faye Cardwell*, *supra* note 3; see also *Lillian Cutler*, *supra* note 5.

In the instant case, appellant did not allege that he developed an emotional condition arising out of his regular or specially assigned duties, or out of specific requirements imposed by his employment. He alleged, for the most part, that his condition was caused by supervisory harassment and discrimination. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act.¹² However, in order for harassment or discrimination to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment or discrimination alone are not compensable under the Act.¹³ In this case, the Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of his allegations, to corroborate that these alleged incidents of harassment or discrimination occurred as alleged. As appellant has the burden of establishing a factual basis for his allegations, he has not met this burden of proof in this case where the allegations in question are not supported by specific, reliable, probative and substantial evidence. Accordingly, the Board finds that these allegations, therefore, cannot be considered to have occurred as alleged and are, therefore, not compensable factors of employment since appellant has not established a factual basis for them.

Several of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*¹⁴ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹⁵ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant, which fall into this category of administrative or personnel actions include: appellant being given letters of warning,¹⁶ being given a suspension,¹⁷ disciplinary actions being grieved,¹⁸ appellant being monitored by having to sign in regularly,¹⁹ not being given overtime²⁰ and that

¹² *Sylvester Blaze*, 42 ECAB 654 (1991).

¹³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁴ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁵ *See Richard J. Dube*, 42 ECAB 916 (1991).

¹⁶ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁷ *See Alice M. Washington*, 46 ECAB 382 (1994).

¹⁸ *Id.*; *see also Daryl R. Davis*, 45 ECAB 907 (1994).

¹⁹ *Id.*

²⁰ *Helen Casillas*, 46 ECAB 1044 (1995); *Alice M. Washington*, *supra* note 17.

his paycheck was short.²¹ Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and, therefore, they are not compensable now under the Act.

Appellant also alleged that he developed an emotional condition due to stress from multiple aspects involving the pursuit of another Act²² claim regarding his knee. The Board has held that stress arising from the processing of a workers' compensation claim for benefits does not arise in the performance of duty as it bears no relation to appellant's day-to-day or specially assigned duties.²³ Therefore, any stress or emotional condition appellant developed regarding problems with processing his earlier claim, or periods of waiting for action on his claim, is not compensable under the Act.

As appellant has failed to establish any compensable factors of his employment implicated in the development of his emotional condition or anxiety disorder, these conditions are not now compensable under the Act. Since the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

Accordingly, December 13 and January 30, 2002 the decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 15, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

²¹ See *Janet I. Jones*, 47 ECAB 345 (1996); *Michael Thomas Plante*, 44 ECAB 510 (1993); *Apple Gate*, 41 ECAB 581 (1990); *Joseph C. DeDonato*, 39 ECAB 1260 (1988).

²² 5 U.S.C. §§ 8101-8193.

²³ *Thomas J. Costello*, 43 ECAB 951 (1992); *George A. Ross*, 43 ECAB 346 (1991).