U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KLAUS D. GRUNHEID and U.S. POSTAL SERVICE,
POST OFFICE, Fontana, CA

Docket No. 03-1319; Submitted on the Record;
Issued November 17, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition causally related to compensable work factors.

On May 10, 2000 appellant filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that he sustained an emotional condition causally related to harassment by employing establishment management.[1] In a narrative statement, appellant explained that May 9, 2000 was his second day carrying a new route. He provided an estimate of the time required for the route, and he believed that his supervisors did not approve of the time estimate, and they harassed him by watching him case mail. According to appellant, on May 10, 2000, his supervisors again were harassing him by requiring him to case mail "18 and 8" (18 letters per minute and 8 flats per minute). Appellant stated that he was told in an angry voice that he had a job to do, and if he could not perform the work, then they would find someone who could carry the route. Appellant indicated that again his supervisors watched him case mail, and appellant became upset and could not continue working.

In a statement dated May 31, 2000, a supervisor Eddie P. Kumiyama, reported that on May 9, 2000 appellant had estimated that three hours of overtime would be needed to complete the route. Mr. Kumiyama stated that he observed appellant performing his job and later appellant reduced his estimate to one hour of overtime. With respect to the incidents on May 10, 2000, Mr. Kumiyama stated that he was informed that appellant was not being productive in the routing of his letter mail, that a supervisor Elijah Stephens informed appellant that he needed to be more productive, and appellant responded that he could not "work like this" and requested sick leave.

---

[1] Although appellant filed a Form CA-1, his accompanying statement discussed incidents on both May 9 and 10, 2000. The appropriate claim form would have been a CA-2, since appellant discussed incidents occurring over more than a single workday. The Office of Workers' Compensation Programs considered the incidents on both dates and, therefore, implicitly developed the claim as an occupational disease claim.

By decision dated October 16, 2000, the Office denied appellant's claim. The Office found that none of the alleged incidents were established as compensable work factors.

In a letter dated November 6, 2000, appellant requested an oral hearing before an Office hearing representative. A hearing was held on August 8, 2001. At the hearing, testimony was offered by Phyllis Cypert, union shop steward, who indicated that she was present on May 10, 2000 at a meeting with appellant and his supervisors. Ms. Cypert recalled that Mr. Kumiyama was antagonistic and did not believe that appellant was ill.

Appellant submitted additional evidence, including a September 28, 2000 "Step B" decision by a grievance dispute resolution team comprised of an employing establishment representative and a union representative. The decision accepted as factual that on May 10, 2000 Mr. Stephens told appellant that he should case 18 and 8 (18 letters per minute and 8 flats per minute); when appellant replied that he was on a new "opt," Mr. Stephens responded that appellant should not opt on a route that he cannot perform. The dispute resolution team agreed that the statement was improper, noting that Article 41 of the national agreement provided that a carrier assigned to a route with which the carrier is not familiar should be allowed a reasonable period to become familiar with the route. The record also contains a "Step B" decision dated November 8, 2000 with respect to the issues of whether management harassed appellant with respect to the estimation process or a request for sick leave. The decision reminds management to handle all requests for leave due to medical appointments in accordance with a November 3, 1999 Equal Employment Opportunity settlement; it also states that management is to treat all employees with mutual respect, approve, disapprove, or modify all requests for overtime, conduct a one-day count if management believes a carrier's efficiency is in question and adhere to all previous settlement agreements regarding the issue of mutual respect. The decision also states that "further violations" may result in a monetary settlement.

In a decision dated November 19, 2001, the Office hearing representative affirmed the October 16, 2000 decision.

In a letter received by the Office on October 28, 2002, appellant requested reconsideration of his claim. He submitted two witness statements in support of his claim.

By decision dated January 22, 2003, the Office reviewed the merits of the case and denied modification of the prior decisions.

The Board finds that the case is not in posture for decision.

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

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

(3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[3]

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4]

The initial question presented is whether appellant has alleged and substantiated a compensable work factor. At issue are the alleged incidents on May 9 and 10, 2000 involving appellant and his supervisors. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.[5] The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.[6]

In the present case, the Office failed to make adequate findings with respect to the allegations of error or abuse and the specific evidence submitted. The hearing representative noted in his November 19, 2001 decision that appellant had submitted a November 8, 2000 grievance resolution decision, and that this decision also makes reference to the September 28, 2000 resolution decision. The hearing representative did not specifically indicate that he reviewed the September 28, 2000 decision. According to the hearing representative, "there is an inference that Mr. Stephen's remark was inappropriate," but there was no objective evidence of error or abuse. The grievance resolution decision dated September 28, 2000 found that Mr. Stephens had made an inappropriate comment by telling appellant that he should not opt on a route that he could not case at 18 letters and 8 flats per minute. According to the decision, Mr. Stephens made this statement both to appellant and to union stewards, Cypert and Griefnow. The decision finds that such a comment was inappropriate because Article 41.F of the labor-management agreement allows a carrier a reasonable amount of time to become proficient on the route.

As noted, it is not clear whether the hearing representative reviewed the September 28, 2000 decision itself. Moreover, there was additional relevant evidence on the issue, such as a

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

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

[5] *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

[6] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

November 1, 2000 statement from Mr. Stephens with respect to the statements made to appellant. The Office should properly consider all of the evidence of record and make an appropriate finding of whether there was compensable error or abuse with regard to comments made by Mr. Stephens on May 10, 2000. In addition, the Office should make appropriate findings with respect to the issues raised in the November 8, 2000 grievance decision. The hearing representative found that the decision "inferred" that management did not strictly adhere to procedures in personnel matters, but the decision addresses specific allegations regarding request for medical leave, requests for overtime assistance and monitoring of appellant's work. The Office must make appropriate findings with respect to these specific allegations.

It is well established that in cases involving emotional conditions, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make proper findings of fact regarding which working conditions are considered compensable factors of employment.[7] The Board finds that the Office did not make adequate findings of fact with respect to the evidence of record.

Accordingly, the case will be remanded to the Office for proper findings of fact on the allegations made by appellant in this case. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated January 22, 2003 is set aside and the case remanded to the Office for appropriate action consistent with this decision of the Board.

Dated, Washington, DC
November 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

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