United States Department of Labor
Employees' Compensation Appeals Board

PAUL SMITH, Appellant	)	
and	)	**Docket No. 05-1144**
	)	**Issued: January 6, 2006**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Springfield, MA, Employer	)	

Appearances:
Katherine Smith, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 22, 2005 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated April 23, 2004 which denied his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On July 15, 2002 appellant, then a 49-year-old modified distribution clerk, filed an occupational disease claim alleging that he sustained anxiety brought on by job stress. He first became aware of the condition and its relationship to his employment on June 24, 2002 when he

stopped work. In an attached statement, appellant alleged that his frustrations and stress at work began in 1997. He had several accepted claims for upper extremity injuries[1] and was on limited duty for the past five years. Appellant stated that he had problems in the past regarding the type of chair he had and the location of his desk, that he was inappropriately called into the office of his superior, Robert G. Helme, to discuss his claims and was made to read the safety manual. He also alleged that handling his workers' compensation claims was stressful. Appellant related that in June 2002 was placed in a very confrontational job in security. At a June 3, 2002 meeting with Robert Brennan, his supervisor, Mr. Helme and Henry Simcox, security supervisor, he was offered a security job in which he would monitor cameras and check building doors and vans in the truck yard to make sure that they were secure. Appellant initially refused the offered position. On June 7, 2002 Mr. Simcox brought it to him and advised him that he had to sign the offer papers, either accepting or refusing the offered position. Appellant went to Mr. Helme's office with a union steward who later told him that appellant was threatened with being fired if he did not accept the offered position. Appellant stated that he became very upset and saw an employing establishment physician. On June 11, 2002 he had a meeting with the plant manager, Bill Boughton and expressed his concerns about the offered position. Appellant related that Mr. Boughton stated that the job offer would be modified to note that he would not have to make statements or testify against fellow employees. Appellant did not sign the job offer. On June 13, 2002 he began the security job, including checking all the doors, making sure that they were not being held open with a piece of wood. On June 17, 2002 as he was checking doors, a coworker cursed at him about problems with a door. Appellant described problems with smokers propping doors open, stating that he discussed his concerns with three supervisors. On June 22, 2002, after he removed a piece of wood that was holding a door open and closed the door, he was cursed at and threatened by a coworker who argued that the door needed to be left open for the drivers to have access. Appellant became upset and told Mr. Brennan that he could not continue the job since people were yelling and screaming at him. On June 24, 2002 while waiting to discuss the position with Mr. Simcox appellant experienced trouble breathing and a headache. He went to the medical unit and saw a physician, Dr. Richard E. Brody, Board-certified in internal medicine and pulmonary disease. Dr. Brody called appellant's personal physician, who recommended that appellant be taken to the hospital by ambulance where he was kept overnight. Appellant saw his physician, Dr. Craig E. Kannel, a Board-certified internist, the following day and was referred to Dr. Usman Qayyum, who told him he could not work due to anxiety.

An employing establishment clinic note dated June 24, 2002 reported that appellant had a new job with security and that on June 22, 2002 a coworker screamed at him. An acute stress reaction was diagnosed with the possibility of a concomitant medical problem. An Office Form CA-16 dated June 24, 2002 provides a history that appellant experienced trouble breathing, headaches and nausea and was advised by his personal physician to go to the emergency room. In a disability slip dated June 27, 2002, Dr. Kannel advised that appellant could not work and needed psychological evaluation.

In a report dated July 1, 2002, Dr. Qayyum noted a history that appellant reported terrible treatment at work and had been involved in an altercation regarding a recent assignment to the

[1] Appellant stated that Office file number 010347921 had been accepted for right lateral epicondylitis and right cubital tunnel syndrome, 010360100 for left should impingement syndrome, left cubital tunnel syndrome and left lateral epicondylitis and 010374100 for left medial epicondylitis.

security detail.[2] He diagnosed major depression, single episode, severe and generalized anxiety disorder and advised that appellant could not return to work until his condition stabilized. By report dated August 28, 2002, Dr. Qayyum reiterated his diagnoses and opined that these appeared to be directly related to work stressors.

By letters dated August 7, 2002, the Office informed appellant of the evidence needed to support his claim and requested that the employing establishment respond to his contentions. On August 21, 2002 the employing establishment controverted the claim. In a statement dated August 5, 2002, Mr. Helme reported that through the years the employing establishment had attempted to accommodate appellant's physical restrictions with modified duty. He stated that the offered security job was within appellant's physical restrictions and that no one had threatened or discussed firing him. An email from Mr. Boughton dated August 9, 2002 noted that appellant was severely restricted and wanted productive work. He assigned appellant to assist Mr. Simcox with building security, stating that the offered position was to check security video screens and doors, which conformed with his physical limitations. Mr. Boughton agreed that appellant would not have to sit in on any kind of arbitration or testify against fellow employees. In a statement dated August 21, 2002, Mr. Simcox noted that in April 2002 the employing establishment was audited for security concerns and needed to take corrective actions. He related that appellant had a strong degree of trepidation about the offered position and that it was modified to meet his concerns. Appellant did not sign the modified-duty offer prior to stopping work on June 24, 2002. Handwritten notes were appended to appellant's statement indicating that he would not be involved in testimony or discipline, that management was trying to keep him gainfully employed. The notes further stated that appellant was not supposed to lock doors to the designated smoking areas.[3] The record also contains an unsigned limited-duty job offer for the security position dated June 5, 2002; a July 1, 2002 letter in which Mr. Brennan requested that appellant submit medical documentation regarding his absence; and an accident report regarding the events of June 24, 2002, signed by Mr. Simcox, Mr. Brennan and Mr. Helme.[4]

By decision dated December 4, 2002, the Office denied the claim, finding that appellant's emotional condition did not occur in the performance of duty. On January 2, 2003 he requested a hearing, contending that Mr. Helme knowingly lied and did not report incidents that occurred in his letter of contravention and that an internal investigation had been conducted. Appellant submitted a letter dated November 25, 2002, written by Mr. Boughton, who responded to his allegations and described a subsequent employing establishment investigation. Regarding alleged fraudulent statements made by Mr. Helme, Mr. Simcox and Daniel Ringuette, manager of injury compensation, Mr. Boughton noted that Mr. Helme initially signed Mr. Brennan's name on the June 24, 2002 accident report, explaining that this was done in Mr. Brennan's absence. He stated that the report would be amended to include a June 22, 2002 incident and the

[2] Dr. Qayyum's credentials could not be ascertained although his reports are headed "psychiatry assessment." Dr. Louis M. Adler, appellant's attending Board-certified orthopedic surgeon, advised in an August 8, 2002 report, that appellant had reached maximum medical improvement on June 12, 2002. He recommended a functional capacity evaluation to determine appellant's capabilities.

[3] The author of the notes is not identified.

[4] The safety officer's signature is illegible.

amended report would be forwarded to the Office. Regarding appellant's allegation that Mr. Brennan was told not to submit paperwork regarding this claim, Mr. Boughton commented that Mr. Brennan was not appellant's supervisor, identifying Mr. Simcox as his supervisor. Regarding his allegation that Mr. Helme singled him out for safety talks, Mr. Boughton noted that Mr. Helme was responsible for the safety record and that the records of all employees who had five or more injuries were reviewed. An amended accident report signed by Mr. Brennan and Mr. Helme on December 13, 2002 was attached.

In emergency room records dated June 24 and 25, 2002, Dr. Michael DeMatteo, a Board-certified internist, diagnosed chest pain. In a disability slip dated December 10, 2002, Dr. Kannel diagnosed a generalized anxiety disorder. In a report dated December 13, 2002, Dr. Brody,[5] Board-certified in internal medicine and pulmonary disease and an employing establishment's physician, advised that appellant was seen by him on June 7, 2002 at which time he appeared upset. Appellant reported that Mr. Helme threatened to terminate him unless he accepted a light-duty position. Dr. Brody noted that he had no first hand knowledge of the discussion and referred appellant to his private physician.

Appellant also submitted handwritten comments on Mr. Helme's August 5, 2002 statement and on Mr. Boughman's November 25, 2002 statement. He alleged that Mr. Helme filled out the accident report without Mr. Brennan's knowledge, stating that, as Mr. Brennan was no longer his supervisor, this should have been done by Mr. Simcox. Appellant also noted that he had been on limited duty since January 10, 2002. He also submitted statements from coworkers in the tag area where he previously worked dated February 2001, regarding the placement of desks and noting a dust problem. In a statement dated January 10, 2003, William Fisher, clerk, stated that he remembered ordering new desks and chairs for the tag area.

In a January 15, 2003 statement, Barry Savoy, a union steward, noted accompanying appellant to a meeting with Mr. Helme in early June 2002 regarding a job offer. Mr. Savoy stated that Mr. Helme encouraged appellant to sign "refused" on the job offer. Mr. Savoy advised appellant that he should have his doctor review the offer before signing but that he should not refuse any offer within the doctor's restrictions, telling appellant that Mr. Helme "could make trouble for you if your doctor okayed it and you refused it." He stated that Mr. Helme later told him that, if appellant did not take the offered job, "I will get him fired."

In a January 16, 2003 statement, Mr. Brennan acknowledged that on Saturday, June 22, 2002 appellant had problems with employees while doing his new security job. A meeting was to be held on Monday, June 24, 2002, but appellant was taken to the emergency room with chest pains. In an April 19, 2003 statement, Thomas F. Kosinski reported that he witnessed appellant being verbally abused and harassed on June 22, 2002, noting that the doors were to be locked at all times and door stops were not to be used. He stated that, while appellant was checking for door stops on the platform, he was verbally accosted in a threatening manner by a number of

[5] Dr. Brody also submitted reports which provided restrictions to appellant's physical activity. In a January 26, 2002 report, an Office medical adviser provided findings regarding his entitlement to a schedule award for his left upper extremity. Dr. Adler also provided reports regarding appellant's left upper extremity. In a report dated March 7, 2003, Dr. S. Karas diagnosed left shoulder pain. Appellant also submitted medical reports regarding other physical conditions and other claims.

employees. Mr. Kosinski stated that after securing the door, appellant told the employees that he was only following orders.

By letter dated June 27, 2003, Karla W. Corcoran of the Inspector General's (IG) Office, discussed appellant's allegations and her subsequent investigation. The results of the IG's review were that he did not substantiate his allegations that signatures on an accident report and a limited-duty assignment had been forged. The investigation did not support that a senior manager intended to remove appellant because of his limited-duty status. The IG, however, found that the senior manager had discussed the possible termination of him if he did not accept a suitable limited-duty job with a former supervisor and a union steward and was thereafter trained on how to properly controvert workers' compensation claims.

At the hearing held on July 1, 2003 appellant testified regarding his previous claims. Appellant alleged being subjected to a stressful meeting regarding the security job and was threatened with firing if he did not accept it. Appellant described the confrontations with employees about keeping the doors locked. He advised that he returned to work in March 2003.

By decision dated August 20, 2003, an Office hearing representative affirmed the December 4, 2002 decision. On January 20, 2004 appellant, through his attorney, requested reconsideration and submitted additional medical evidence. In a December 17, 2003 report, Dr. Qayyum stated that his records indicated that on June 22, 2002 appellant had a confrontation with coworkers, after which there was a significant onset of symptoms consistent with major depression with anxiety features. He began treating appellant in July 2002 and after improvement, recommended that in March 2003 appellant return to work but continue treatment.

The employing establishment submitted emails dated February 4, 2004 in which Ms. Bampos, human resources specialist and Mr. Helme discussed appellant's claim.

In a decision dated April 23, 2004, the Office modified the August 20, 2003 decision to accept that the June 22, 2002 confrontation incident occurred as alleged and was a compensable factor of employment. The Office, however, denied the claim, finding that the medical evidence of record did not support that this incident caused the claimed emotional condition.[6]

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[7]

[6] On December 14, 2004 appellant's attorney again requested reconsideration. The record before the Board does not contain a decision on this request. On April 22, 2005 appellant filed his appeal with the Board. It is well established that the Board and the Office may not exercise concurrent jurisdiction over the same issue in the same case. *Cathy B. Millin*, 51 ECAB 331 (2000); *Douglas E. Billings*, 41 ECAB 880 (1990).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[8] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[9] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[10] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[11] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[12]

In emotional conditions claims, when working conditions are alleged as factors in causing a condition or 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. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[13]

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.[14] An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.[15] An employee's frustration from not being permitted to work in a particular

[8] 28 ECAB 125 (1976).

[9] 5 U.S.C. §§ 8101-8193.

[10] *See Robert W. Johns*, 51 ECAB 137 (1999).

[11] *Lillian Cutler*, *supra* note 8.

[12] *Kim Nguyen*, 53 ECAB 127 (2001).

[13] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[14] *Felix Flecha*, 52 ECAB 268 (2001).

[15] *James E. Norris*, 52 ECAB 93 (2000).

environment or to hold a particular position is not compensable.[16] Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[17]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee 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. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[18]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[19] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[20] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[21]

ANALYSIS

The Office accepted that the June 22, 2002 confrontation with coworkers regarding whether doors should be locked occurred in the performance of appellant's security duties. This is a compensable factor of employment under *Cutler*. Regarding appellant's allegation that Mr. Helme fraudulently signed the accident report, the employing establishment explained that this was done in Mr. Brennan's absence. The report contained no factual misrepresentations and an amended report was later completed. The Board, therefore, finds that the employing establishment did not commit error or abuse in this administrative matter.[22] The Board also finds that the employing establishment did not commit error or abuse in the handling of appellant's workers' compensation claims and in having a safety discussion with him. Although controverting a claim and monitoring activities at work are generally related to the employment,

[16] *Barbara J. Latham*, 53 ECAB 316 (2002).

[17] *Id.*

[18] *James E. Norris*, *supra* note 15.

[19] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[20] *Leslie C. Moore*, *supra* note 7; *Gary L. Fowler*, 45 ECAB 365 (1994).

[21] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[22] *Felix Flecha*, *supra* note 14.

they are administrative functions of the employer and not duties of the employee. These are administrative or personnel matters and, absent error or abuse, do not fall within the coverage of the Act.[23] Regarding the placement of desks and chairs in the tag area, while appellant submitted evidence supporting the conditions were dusty, the Board finds that this does not establish error or abuse. The evidence, therefore, does not establish that these allegations constitute compensable employment factors.

Regarding appellant's contention that the offered security position was not suitable and it was abusive for Mr. Helme to threaten to have him fired, the Board notes that section 8106(c)(2) of the Act provides that a partially disabled employee who refuses or neglects to work after suitable work is offered is not entitled to compensation.[24] The record reflects that the IG's Office conducted an investigation, found that a senior manager discussed the possibility of termination if appellant did not accept an offered position and was thereafter trained in procedures concerning workers' compensation claims. The Board, however, finds that this discussion does not establish error or abuse on the part of his manager with regard to his discussion with a union steward.[25] Appellant, therefore, did not establish a compensable factor of employment in this regard.

Appellant also generally alleged that he was harassed by the employing establishment beginning in 1997. As stated above, mere perceptions of harassment are not compensable under the Act[26] and a claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[27] The Board finds that appellant has not provided a factual basis to establish his allegations of harassment.

The Board notes that, while Dr. Qayyum's reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that his disability beginning June 24, 2002 was caused by the accepted confrontation that occurred on June 22, 2002, this does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. Dr. Qayyum began treating appellant in July 2002 and opined that his condition was work related. In a December 17, 2003 report, he advised that, after the accepted June 22, 2002 confrontation at work, appellant experienced onset of symptoms consistent with major depression and anxiety and advised that he could not work until March 2003. In the absence of medical evidence to the contrary, Dr. Qayyum's reports are sufficient to require the Office to further develop the record.[28]

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[23] *Jamal A. White*, 54 ECAB ___ (Docket No. 02-1559, issued December 10, 2002).

[24] 5 U.S.C. § 8106(c)(2).

[25] *See Michael A. Deas*, 53 ECAB 208 (2001).

[26] *James E. Norris*, *supra* note 15.

[27] *Id.*

[28] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

The case will be remanded to the Office to prepare an updated statement of accepted facts, to include the accepted employment factor and further develop the medical evidence to determine whether appellant's medical condition and disability beginning on June 24, 2002 was caused by the accepted employment factor. After such further development as deemed necessary, the Office shall issue a merit decision on his claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 23, 2004 be vacated and the case remanded to the Office for proceedings consistent with this opinion.

Issued: January 6, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board