United States Department of Labor
Employees' Compensation Appeals Board

I.M., Appellant	)	
and	)	**Docket No. 06-1771**
	)	**Issued: March 27, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

Appearances:
Appellant, pro se
Catherine P. Carter, Esq., for the Director

Oral Argument February 21, 2007

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 28, 2006 appellant filed a timely appeal from the July 6, 2006 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of his emotional injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 13, 2005 appellant, then a 47-year-old motor vehicle operator, filed a traumatic injury claim alleging that he sustained an emotional condition in the performance of duty on April 1, 2005: "I was driving and emotionally lost it completely. I forgot where I was going and what location I was at." A supervisor reported that appellant asked for a claim form on April 13,

2005 "because he said he was very upset that District Manager Rucker had told him that he would grant him a temporary transfer and did not." Appellant later filed an occupational disease[1] claim:

> "The doctor put me on five hours of driving but management refused. I was ordered to take time off pending light duty. I drove for about four hours and Supervisor Mr. Pope told me I have to clock out. Manager Mr. Eddin told me I will be off until I am assigned light duty. This is the reason I am filing this claim."

Appellant explained that he could not drive without restrictions and that management would not allow him to drive with restrictions. Management would not modify his run so he could perform his job and it would not extend his light duty. Joe Eddin, he stated, told him that management will do only what they are required to do.

On May 31, 2005 appellant replied to the Office's request for additional information:

> "After my lawsuit Supervisor Ms. Williams told me Mr. Cassel would not sign and approve that I get paid for my deposition that I was ordered to appear. I was not paid on time because of it.
>
> "Supervisor Mr. Richardson told me he did not agree and was ordered to give me the letter of warning (that I can be terminated because I forgot to return the fuel card which I returned the very next day) if it happened again.
>
> "I wrote that I do not wish to file a CA-1 on a slight ankle sprain. Supervisor Mr. Richardson told me Manager Mr. Cassel ordered that I file a CA-1 which was not necessary (because of the form I signed). Supervisor Mr. Richardson told me not everyone is against you because Supervisor Mr. Perez was ordered to give you disciplinary action against you but he would not do it so he received it. What happened was Mr. Perez decided it was not my fault when the automatic gate closed on my truck because of two witnesses statements. Mr. Cassel overturned the decision.
>
> "Ms. Dunaway at the E.E.O.C. in Washington, D.C. told me that I won and they are working on a settlement. Ms. Lori Grant at the E.E.O.C. F.A.S.T. (Federal Appellate Settlement Team) program asked the Postal Service to try to settle at least twice that I know of, but they refused. Administrative Judge Ms. Read told me they would file discrimination charges but the Federal Government does not want lawsuits. Judge Ms. Read also told me that she was wrong and you do need

[1] An "occupational disease or illness" means a condition produced over a period longer than a single workday or shift. A "traumatic injury" means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5 (definitions).

to hire an attorney. United States District Judge refuse[d] to allow it to go to trial which I am appealing to the Fifth Circuit Court.

"I went to Dr. Hauser and explained what happened to me when I was driving the truck. Dr. Hauser prescribed depression and sleep medication. Dr. Hauser told me the United States Attorney contacted him about my lawsuit. Dr. Hauser told me he does not handle Workers Comp cases. All I am taking is the sleep medication.

"If I have an occupational disease or illness, ask the Postal Service what they are going to do about it, because of it. What happened to me was a traumatic injury.

"If your office does not agree or anyone dispute what I wrote please let me know before you dismiss my claim so I can give additional information that might be necessary."

The record shows that appellant filed a grievance over having to use sick leave and leave without pay when, after his doctor cleared him to return to full duty, the employing establishment denied his return. The Step 2 decision found that management did not violate any provisions of the national or local agreement. The decision found no employee was identified as having been treated differently than appellant in a like or similar situation. The decision found that appellant failed to meet his burden proof. The record shows that appellant appealed to arbitration. Appellant also filed a grievance over having received a letter of warning dated April 16, 2004 for failing to follow instructions.

In a decision dated July 14, 2005, the Office denied appellant's claim for workers' compensation benefits. The Office found that he failed to establish a factual basis for his claim.

On August 8, 2005 appellant requested an oral hearing before an Office hearing representative. On April 19, 2006 he appeared and gave testimony. On April 27, 2006 he provided an additional statement:

"I ask[ed] the Department of Labor to rule I sustained an injury working for the Postal Service. I was told I have 30 days from the date of my hearing to present any additional evidence that I suffer an injury working for the Postal Service.

"On January 12, 2000 Dr. Bram wrote that I do not suffer from any current mental illness.

"For the Postal Service to send me to doctors prior and including January 12, 2000 and not stop the way I was treated is well documented and part of the lawsuit, including sending me to doctors and refuse to transfer me. I continued to complain the way I am treated and asked for a temporary transfer until the lawsuit is decided. Cliff Rucker District Manager told me he will grant a temporary transfer but it was not done and now I am told it can't be done without a doctor saying medically I can't drive.

"The dysthymic condition I suffer from is because working for the Postal Service. Also the E.E.O.C. finally telling me I won, but dismissing my claim. The decision of the Labor Board to dismiss my claim and now the Department of Labor. The Department of Labor should allow the Federal Government to pay for my treatment and medication if needed.

"Also for the Postal Service to supply me a job that I can do, so maybe I will not need medication and treatment. I should not be under threat that I can be terminated. Enclose is the first complaint and the appeal including the four page statement of another complaint I sent with my appeal. The letters dated January 15, 2000, April 26, 2006, etc. Also Dr. Bram's report dated January 12, 2000."

On April 18, 2006 Dr. Donald E. Hauser, a psychiatrist, reported as follows:

"I first saw [appellant] on October 25, 1999. He was seen again on November 4, 1999. [He] was evaluated again on April 5, 2005 and my diagnosis was Dysthymic Disorder. On September 15, 2005 he was seen in follow up.

"If further information is needed, please do not hesitate to contact me."

In a decision dated July 6, 2006, the Office hearing representative affirmed the denial of workers' compensation benefits. The hearing representative found that appellant did not meet his burden of proof to establish that he sustained an emotional condition arising in the performance of duty. He found that appellant had not established a compensable factor of employment.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] But workers' compensation does not cover each and every illness that is somehow related to employment.[3] An employee's emotional reaction to an administrative or personnel matter is generally not covered. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[4] Perceptions alone are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.[5]

[2] 5 U.S.C. § 8102(a).

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

[4] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 42 ECAB 566 (1991), *reaffirming* 41 ECAB 387 (1990).

[5] *Ruthie M. Evans*, 41 ECAB 416 (1990).

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment.[6] This burden includes the submission of a detailed description of the employment factors that he believes caused or adversely affected the condition for which he claims compensation.[7] The employee's burden of proof is not discharged by the fact that he has identified employment factors that may give rise to a compensable disability. He must also submit a well-reasoned medical opinion establishing that he has an emotional or psychological disorder and that such disorder is causally related to the identified compensable employment factors.[8]

ANALYSIS

Dr. Hauser, a psychiatrist, diagnosed dysthymic disorder but offered no opinion on whether this condition was causally related to appellant's federal employment. The Board has reviewed the record on appeal and can find no medical opinion supporting appellant's claim that his federal employment caused or aggravated a diagnosed emotional condition. The Board finds that appellant has failed to make a *prima facie* claim for compensation.[9] Appellant has not met his burden of proof.

The Office denied appellant's claim on the basis that he did not establish his allegations of discrimination or error and abuse by employing establishment personal as a compensable factors of employment. He argues that his condition is job related, but that is not enough. As noted above, workers' compensation does not cover each and every illness that is somehow related to employment. The emotional injury must arise out of factors that are recognized as properly falling within the scope of workers' compensation.

Appellant has strong feelings about the way in which management treated him over the years. As he stated during oral argument before the Board, he cannot let it go. But actions taken by management are generally not covered by workers' compensation. The Board has held that an oral reprimand generally does not constitute a compensable factor of employment,[10] neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;[11] investigations;[12] determinations concerning promotions and the work environment;[13]

---

[6] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[7] *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (one of the essential elements of a claim is that the claimant specify factors of his employment that he believes have caused an injury, such as an emotional or hypertensive condition).

[8] *William P. George*, 43 ECAB 1159, 1168 (1992).

[9] *See Herman E. Harris* (Docket No. 91-1754, issued April 29, 1992) (finding that the claimant failed to establish a *prima facie* claim for compensation where he submitted no medical opinion relating his occupational disease or condition to factors of his federal employment).

[10] *Joseph F. McHale*, 45 ECAB 669 (1994).

[11] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[12] *Sandra F. Powell*, 45 ECAB 877 (1994).

[13] *Merriett J. Kauffman*, 45 ECAB 696 (1994).

discussions about an SF-171;[14] reassignment and subsequent denial of requests for transfer;[15] discussion about the employee's relationship with other supervisors;[16] or the monitoring of work by a supervisor.[17] Administrative and personnel matters such as these undoubtedly relate to work, but an employee's adverse emotional reaction to such matters is not compensable absent evidence of error or abuse in the administration action. However, appellant has submitted no proof of such error or abuse to substantiate his various allegations.

Appellant has pursued at least some of his complaints through the grievance process and with an EEOC complaint, but there is no final decision finding merit in any of his allegations. His perception of discrimination and harassment is not enough. To show that his claim falls within the exception to the general rule, he must substantiate any allegation of error or abuse with documentary evidence. The record shows some disciplinary actions taken against appellant in an August 17, 2004 letter of warning for improper conduct on July 19, 2004; a proposal to discipline him for failing to turn in a fuel card prior to the end of his tour on March 21, 2004; a May 25, 1995 letter of warning unsatisfactory safety performance on May 1, 1995; a June 20, 1995 notice of suspension for unsatisfactory safety performance on June 11, 1995; and a September 17, 1999 temporary suspension of driving privileges following a fitness-for-duty examination. None of these actions or any of the actions appellant relates, are shown to have been unwarranted or in error.

Among appellant's complaints against management are changes in the hours he worked and changes in his working conditions. Chief among the complaints is management's decision to send him home after three or four hours of driving, when a doctor cleared him to drive up to five hours and work up to eight. None of this is sufficient to establish a workers' compensation claim without evidence that management's actions were erroneous or abusive. Appellant has submitted nothing to show that management may not limit the hours he drives or the hours he works although his doctor clears him for more. The Office denied appellant's claim for benefits on these grounds. The Board will affirm.[18]

CONCLUSION

The Board finds that appellant has not met his burden of proof. His claim does not fall within the scope of workers' compensation as a general rule and he has not submitted evidence to show that his claim fits within the recognized exception for administrative error or abuse.

[14] *Lorna R. Strong*, 45 ECAB 470 (1994).

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

[16] *Raul Campbell*, 45 ECAB 869 (1994).

[17] *Daryl R. Davis*, 45 ECAB 907 (1994).

[18] The record does not substantiate appellant's allegations of anti-Semitism and physical assault. His frustration with the EEOC process or the administrative judge or the failure to reach a settlement or the federal judiciary or "the system" itself (with one agency using another agency as an excuse for doing nothing) is simply outside the scope of workers' compensation.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board