United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant	)	
	)	**Docket No. 07-104**
and	)	**Issued: March 16, 2007**
U.S. POSTAL SERVICE, LONGMONT POST OFFICE, Longmont, CO, Employer	)	

Appearances:
H. Earl Moyer, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 16, 2006 appellant, through counsel, filed a timely appeal from merit decisions dated December 20, 2005 and August 1, 2006 of the Office of Workers' Compensation Programs, finding that he did not sustain an emotional condition while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition while in the performance of duty.

FACTUAL HISTORY

On August 23, 2005 appellant, then a 52-year-old mail carrier, filed an occupational disease claim. On March 26, 2005 he first became aware of his emotional problems with clinical depression and anxiety. An attending psychiatrist told appellant that his frustration at being asked to perform work beyond his physical limitations in his restricted duty classification and

harassment by his superiors who demanded that he transfer to another classification caused extreme stress which led to his anxiety, anger and clinical depression. Appellant stopped work on March 25, 2005 and did not return.

In a statement dated September 26, 2005, Mike Fittje, supervisor, controverted appellant's claim. Mr. Fittje and Cathy Minter, the postmaster, instructed appellant on several occasions not to work outside his restrictions. Appellant was given a limited-duty job offer which he accepted. Mr. Fittje noted that appellant had a problem with sick leave usage during the prior three years and had not worked since March 26, 2005.

In an August 23, 2005 statement, appellant further described the development of his emotional condition. He experienced depression since surgery in 1998 due to a December 27, 1994 work-related injury. Based on the recommendation of an Employee Assistance Program (EAP) counselor, appellant stated that he was evaluated by R. Kent Hinesley, Ph.D., whose specialty was in psychology, on November 19, 2004. He had been on permanent restricted duty since 1998 and harassed by his supervisors and postmaster. Appellant alleged that the postmaster pressured him to change his craft classification from carrier to clerk and urged him to resign or retire from the employing establishment. He contended that on several occasions he was ordered to perform physical work outside his limitations. In a June 22, 2005 medical report, Dr. Hinesley stated that appellant's depression was caused by employment activity. He explained that appellant was asked to do things that added extra stress, which led to frustration, anger, feelings of hopelessness and depression.

By letter dated October 13, 2005, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit.

In a November 9, 2005 letter, Arlette Elicerio, an employing establishment injury compensation specialist, controverted appellant's claim. She contended that appellant failed to provide any objective documentation to establish his claim. Ms. Elicerio denied that appellant had been continually harassed by his supervisors or the postmaster and contended that the allegation was unsubstantiated. She also denied that he was pressured to change crafts, resign or retire. Ms. Elicerio noted the employing establishment's responsibility to find work for its injured employees within their restrictions and in some cases it had changed the craft of some employees. If it was determined that the employee could no longer perform the essential functions within his craft, work was found in other crafts within the employee's restrictions. Ms. Elicerio indicated that more changes took place in the carrier craft because it involved more strenuous essential functions than the clerk craft. She denied appellant's allegation that he was required to work outside his physical restrictions. Ms. Elicerio noted that he had been performing limited-duty work since 1998 and that he agreed to work in this position.

By decision dated December 20, 2005, the Office found that appellant did not sustain an emotional condition while in the performance of duty. It found that he did not submit evidence to substantiate his allegations that he had been harassed by his supervisors or the postmaster, that the postmaster pressured him to change his craft classification, resign or retire or that he was required to work outside his physical limitations.

Appellant requested an oral hearing before an Office hearing representative.[1] At the May 16, 2006 hearing, he testified that he began working at the employing establishment in March 1983 and that he sustained an employment-related back and hip injury on December 27, 1994 which required surgery in 1998. Since 1998, he had physical limitations related to lifting, standing, walking and bending and he was on permanent restricted duty. Appellant reiterated his prior allegations and alleged harassment by supervisors, Joe Bachoffer, Murray Johnson, Jerry Wilson and Barbara Kohlbeck. He alleged harassment by coworkers who complained about him being in the break room and not having to carry the mail as required in his job description. While working at the Longmont processing plant, Ms. Kohlbeck assigned him work duties outside his physical restrictions. In March 2005, she assigned him to process passports but did not provide him with any training for this task. Ms. Kohlbeck also tried to get him to change his job classification from carrier to clerk on three or four occasions due to a change in his hours but he refused to do so. Appellant stated that a coworker told him that he was being punished as the reason why he was sent to work at the Twin Peaks mail processing facility. He contended that Ms. Kohlbeck specifically urged him to resign or retire on medical disability on two or three occasions and she had asked Woody Joiner, an employing establishment employee, to also ask him.

Appellant contended that he was required to drive and lift beyond his restrictions. He noted that Ms. Kohlbeck and Gary Hall, a clerk, asked him to lift a parcel weighing either 51 or 52 pounds in a hurry. When appellant lifted the parcel, he pulled a muscle in his neck. Ms. Kohlbeck filled out an accident report but appellant stated that he did want to pursue it based on his current claim. Appellant also contended that he also worked outside his physical restrictions when he processed express mail and took "hot case mail" out to carriers on their route which involved lifting trays. He had to rush to get the express mail out by a 12:00 noon deadline and to find carriers on the street. Appellant later testified that, although he was not sure how much the parcel weighed, it exceeded his restriction of lifting no more than 20 to 25 pounds. He did not file any grievances against the employing establishment regarding his allegations.

By decision dated August 1, 2006, an Office hearing representative affirmed the December 20, 2005 decision. He found that Postmaster Minter's request that appellant change his craft from letter carrier to clerk constituted an administrative matter and appellant failed to establish that the employing establishment committed error or abuse. Except for the incident at the Twin Peaks Processing Plant where Ms. Kohlbeck instructed him to deliver a parcel weighing 51 pounds, appellant failed to identify specific incidents where he was asked to work outside his physical restrictions by his supervisors. The hearing representative found that this incident did not constitute a compensable factor of appellant's employment. He further found that appellant failed to establish that he was harassed by his coworkers and that his allegation that he was assigned the task of handling passport applications without receiving any training did not constitute compensable factors of his employment.[2]

[1] The Board notes that appellant's request for a hearing is not contained in the case record.

[2] In the August 1, 2006 decision, the hearing representative noted that Ms. Elicerio submitted comments dated June 16, 2006 in response to appellant's hearing testimony. The Board notes that the case record does not contain Ms. Elicerio's comments. However, based on her comments as related by the hearing representative's account, it appears that she merely reiterated her November 9, 2005 comments in denying appellant's allegations.

LEGAL PRECEDENT

A claimant 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 that he sustained an emotional condition in the performance of duty, a claimant 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]

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*,[5] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[6] There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.[7] When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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 his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[8] There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.

In cases involving emotional conditions, the Board has held that, 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.[9] 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

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

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

[5] 28 ECAB 125 (1976).

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[8] *Lillian Cutler*, *supra* note 5.

[9] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[10]

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 frustration from not being permitted to work in a particular environment or to hold a particular position.[11] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.[12] However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[13]

ANALYSIS

Appellant attributed his emotional condition to being required by his supervisor, Ms. Kohlbeck, to work outside his physical limitations. He contended that she instructed him to process passports but failed to provide him with any training on how to perform this task. Appellant further contended that she instructed him to lift a parcel weighing 51 or 52 pounds which was outside his lifting restrictions. He contended that he processed express mail and took "hot case mail" out to carriers on their routes which involved lifting trays. The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if such activity is substantiated by the evidence of record.[14] Appellant has not submitted sufficient evidence to establish that he was required to work beyond his physical limitations. He stated that he was not sure how much the parcel weighed or whether Ms. Kohlbeck knew how much it weighed. The statements from Mr. Fittje, a supervisor, and Ms. Elicerio, an injury compensation specialist, indicated that appellant was instructed on several occasions not to work outside his restrictions and that he had been performing limited-duty work since 1998. Appellant has not provided evidence sufficient to show that the employing establishment required him to work beyond his restrictions. His allegation that the employing establishment failed to provide adequate training, involves an administrative function of the employer and not to the employee's regular or specially assigned work duties.[15] Appellant has not submitted any evidence of error or abuse on behalf of the employing establishment with regard to its training practices. Accordingly, he has not substantiated to compensable factors of employment as to these allegations.

[10] *Id.*

[11] *Lillian Cutler*, *supra* note 5.

[12] *Michael L. Malone*, 46 ECAB 957 (1995).

[13] *Charles D. Edwards*, 55 ECAB 258 (2004).

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

[15] *See Michael Thomas Plante*, 44 ECAB 510 (1993).

Appellant alleged harassment by his supervisors and coworkers. He stated that Postmaster Minter and Ms. Kohlbeck pressured him to change his craft classification from carrier to clerk or to retire or resign from the employing establishment on medical disability. Appellant contended that his coworkers complained about him being in the break room and not having to carry mail, as required in his job description. Ms. Elicerio denied appellant's allegations of harassment by his supervisors and Postmaster Minter. She stated that he was not pressured to change crafts, resign or retire. Ms. Elicerio further stated that it was the employing establishment's responsibility to find work for injured employees within their restrictions; noting that, in some cases, it had to change the craft of an employee after it was determined that he could no longer perform the essential functions of his craft. She explained that more changes occurred in the carrier craft because it involved more strenuous essential functions than the clerk craft. Appellant did not submit any witness statements to substantiate his allegations of harassment, *i.e.*, that he was forced to change his craft and/or to retire. The Board, therefore, finds that he has not established a factual basis for his perceptions of harassment at the employing establishment. He did not provide any probative evidence to establish that harassment occurred.[16] Therefore, he did not establish a compensable employment factor with respect to harassment.[17]

CONCLUSION

As appellant has not identified any compensable factors of his employment, the Board finds that he has failed to establish that he sustained an emotional condition while in the performance of duty.[18]

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

[17] *See Jamel A. White*, 54 ECAB 224 (2002).

[18] As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment as the cause of his emotional condition, the medical evidence relating appellant's emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2006 and December 20, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 16, 2007
Washington, DC

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

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

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