United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 08-1163**
	)	**Issued: October 3, 2008**
U.S. POSTAL SERVICE, POST OFFICE, San Juan, PR, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 11, 2008 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated August 31, 2007 and February 27, 2008 denying 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 sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 19, 2007 appellant, a 46-year-old modified letter carrier, filed an occupational disease claim, alleging stress and depression as a result of conditions of his federal employment. He stated that he was harassed and discriminated against on the basis of his race and disability resulting from a May 30, 1995 on-the-job injury.

The record reflects that appellant's July 23, 1998 occupational disease claim (File No. 90442891) was accepted for left knee strain and left knee meniscal tear. The Office issued an August 8, 2000 decision finding that appellant's actual earnings as a modified city carrier technician fairly and reasonably represented his wage-earning capacity, and that appellant had no loss of wage-earning capacity based on his actual earnings in the modified position. On November 27, 2004 appellant voluntarily transferred from his job in Michigan to a part-time flexible (PTF) postal position in Puerto Rico. The PTF position did not guarantee more than four hours of work per pay period and was based on the work available in the office. Appellant subsequently claimed wage-loss compensation, as he was not being provided full-time employment in his PTF position in Puerto Rico. By decisions dated April 5 and August 25, 2006 and March 21, 2007, the Office denied modification of the August 8, 2000 loss of wage-earning capacity decision. On November 13, 2007, the Board affirmed the Office's decisions, finding that the fact that appellant voluntarily transferred to a position which provided fewer hours of work than the position for which the wage-earning capacity was based, was not a basis for modification of the wage-earning capacity decision or evidence that the reduction in hours was due to residuals of his accepted conditions.[1]

The record contains a June 25, 2007 letter from the employing establishment advising him that "effective immediately" he would only be allowed to be on the clock while performing work on his daily assignment and that once the assignment was completed, he had to clock out and leave the postal premises. In a note dated July 18, 2007, Dr. Angel L. Ramos Casanova, a treating physician, diagnosed anxiety and depression.

On July 30, 2007 the Office informed appellant that the information submitted was insufficient to establish his claim. It advised him to submit details of alleged employment incidents that caused or contributed to his claimed condition. The Office also asked for a medical report containing a description of his symptoms, a diagnosis, and an opinion, with medical reasons, on the cause of his condition.

By decision dated August 31, 2007, the Office denied appellant's claim, finding that he had failed to establish a compensable factor of employment. It did not address the sufficiency of the medical evidence. On September 8, 2007 appellant requested a telephonic hearing.

In an October 5, 2006 letter, the employing establishment stated that appellant was a part-time flexible letter carrier at the time of his 1995 injury. In a letter dated June 26, 2007, Postmaster Hernandez notified appellant that he was being placed in an off-duty status because he left a threatening voice mail message on the answering machine of Zan Dakarp in violation of employing establishment procedures.

The record contains numerous statements and letters from appellant concerning allegations against employing establishment personnel. In a letter dated December 8, 2006, appellant stated that he felt discriminated against because of his 1995 knee injury, and that other casual carriers received more work hours than he did. He noted, "The joke of the day is Marshall you can work more hours if you fix your left leg or get a new one." In a May 9, 2007

[1] *See D.M.*, 59 ECAB ___ (Docket No. 07-1230, issued November 13, 2007). The facts and conclusions of law contained in that case are incorporated herein by reference.

letter to the Department of Justice, appellant contended that the employing establishment had violated the Federal Employees' Compensation Act by refusing to comply with an August 2000 loss of wage-earning capacity decision, which required it to provide him with an eight-hour workday. On June 26, 2007 appellant contended that Postmaster Hernandez had precluded him from completing his assigned duty and had "punched him out" without telling him. On July 17, 2007 he stated that the employing establishment was refusing to honor the Office's instructions and had been discriminating against him for the past 21 months on the basis of race and disability. On August 20, 2007 he alleged that his anxiety was due to the employing establishment's failure to accommodate his 1995 injury following his voluntary relocation to Puerto Rico. On November 13, 2007 he stated that he was sent home on November 10, 2007 after working only two hours. In an undated statement of disability, appellant alleged that the employing establishment had failed to provide him with work within his restrictions, in spite of repeated requests.

Appellant submitted documents related to an unsigned, undated "Complaint" against the employing establishment.[2] He alleged that the employing establishment in Puerto Rico sent him home from work on September 5, 2005 without cause and did not attempt to accommodate the 40 hours per week compensation he received prior to May 30, 1995; that the establishment treated him differently than other disabled employees; and that he had been unable to receive fair accommodations for the past 18 months. Appellant asked for 30 million dollars in compensatory damages.

The record contains personnel records, including undated "vehicle time records;" undated evaluations; and a description of a limited-duty position for a "casual trigger." Appellant submitted a November 17, 2007 report from Dr. Casanova diagnosing anxiety and depression.

During the December 14, 2007 telephonic hearing, appellant acknowledged that he voluntarily transferred from a part-time carrier position in Michigan to a position in Puerto Rico which did not guarantee him eight hours of work per day. He stated that he had not worked outside his restrictions. Appellant contended that the employing establishment's failure to provide him with as many hours as other part-time flexible employees constituted discrimination.

In a January 18, 2008 letter, the employing establishment controverted appellant's claim. Antonio Guzman, manager of health resource management and safety of the Caribbean district, stated that the post office in which appellant worked had two routes. The first, an eight-hour shift, was satisfied by a full-time carrier; the second, a seven-hour shift, was divided by two PTF employees, one of who was appellant. He noted that PTF employees were not guaranteed eight-hour workdays.

The record contains a February 11, 2008 memorandum notifying appellant that effective February 12, 2008 his schedule would require him to work from 8:00 a.m. to noon. A portion of an Equal Employment Opportunity (EEO) investigative affidavit, signed by Antonio Guzman on January 24, 2006, contained appellant's allegation that his transfer was discriminatory because it

[2] The documents do not reflect whether, or the jurisdiction in which, they were filed.

"violated his permanent job offer." Appellant submitted a February 12, 2008 "undelivered mail" report, which contained his notation that his manager had instructed him to return the mail to the post office and go home, rather than deliver the mail. On February 13, 2008 he contended that the employing establishment hired temporary workers to perform his duties in order to save money. On February 16, 2008 appellant alleged that management had informed him that his loss of wage-earning capacity determination had been cancelled.

In a January 22, 2008 report, Dr. Hector L. Rodriguez-Martinez, a psychiatrist, diagnosed major mood disorder, depressed, with anxiety. He stated, "Apparently, [appellant's] work situation has been contributing to his emotional condition." On February 16, 2008 Dr. Rodriguez-Martinez opined that appellant was disabled until March 22, 2008.

By decision dated February 27, 2008, an Office hearing representative affirmed the August 31, 2007 decision, finding that appellant had failed to establish a compensable factor of employment. Noting that appellant's voluntary transfer did not carry with it a guarantee of full-time work, the representative found that the evidence did not establish that the employing establishment had committed error or abuse in assigning his work duties and schedule.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the 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 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.[3]

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. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[4] Assignment of work is an administrative function of the employer.[5] Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[6]

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

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

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

[6] *Id.*

ANALYSIS

The Board finds that appellant has not established any compensable factors of employment under the Act. Therefore, he has failed to establish that he sustained an emotional condition in the performance of duty.

Appellant did not attribute his emotional condition to the performance of his regular duties or to any special work requirement arising from his employment duties under *Cutler*; nor did he implicate his workload as having caused or contributed to his emotional condition. Rather, appellant contended that the failure to provide him with a 40-hour workweek following his transfer to Puerto Rico caused his emotional stress and depression. He complained that management violated the August 8, 2000 loss of wage-earning capacity after the transfer, by failing to provide him with work within his restrictions and by reducing the number of hours he was allowed to work. The Board finds that appellant's allegations that the employing establishment improperly reduced his work schedule and unfairly assigned more work hours per shift to other PTF employees, relate to administrative or personnel matters, unrelated to his regular or specially assigned work duties and do not fall within the coverage of the Act.[7] Although the handling of disciplinary actions, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[8] However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[9]

The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these administrative matters. The record reflects that appellant voluntarily transferred to a position in Puerto Rico which provided fewer hours of work than the position for which his wage-earning capacity was based. Appellant was aware that the new position did not come with a guarantee of more than four hours per pay period and was based on the availability of work in the office. The employing establishment explained that the post office in which appellant worked had two routes. The first, an eight-hour shift, was satisfied by a full-time carrier; the second, a seven-hour shift, was divided between two PTF employees, one of whom was appellant. Therefore, as appellant was a PTF employee, it was not only reasonable, but necessary, for the employing establishment to assign him to a shift that was less than full time. The Board finds that the employing establishment's act of placing appellant in an off-duty status because he left a threatening voice mail message on a coworker's answering machine in violation of employing establishment procedures was reasonable under the circumstances. Appellant has provided no evidence to show that the employing establishment required him to work beyond his restrictions, or failed to provide work for him

[7] *See Lori A. Facey*, 55 ECAB 217 (2004). *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[8] *Id.*

[9] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

within his restrictions. In fact, he acknowledged during the telephonic hearing that he had been provided with work that satisfied his limitations. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that he was harassed and discriminated against on the basis of his race and disability. He stated that he felt discriminated against because of his 1995 knee injury and that the employing establishment treated him differently than other disabled employees. The Board finds that appellant has not submitted sufficient evidence to establish his claim of harassment or discrimination.[10] To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[11] However, to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[12] In the instant case, appellant has not cited specific examples of harassment or discrimination, supported by corroborative evidence, such as witness statements. His general allegations alone are insufficient to establish a factual basis for his claim.[13] Appellant reported that he was depressed and stressed as a result of management's treatment. However, under the circumstances of this case, the Board finds that his emotional reaction must be considered self-generated, in that it resulted from his perceptions regarding his supervisors' actions.[14] Thus, the Board finds that appellant has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment and discrimination.

The record reflects that appellant filed an EEO complaint. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[15] Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO Commission standards. 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.[16] Appellant has failed to do so in the instant case.

[10] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[11] *See Lori A. Facey*, *supra* note 7. *See also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[12] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[13] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[14] *See David S. Lee*, 56 ECAB 602 (2005).

[15] *See James E. Norris*, 52 ECAB 93 (2000). *See also Parley A. Clement*, 48 ECAB 302 (1997).

[16] *See James E. Norris*, *supra* note 15. *See also Michael Ewanichak*, 48 ECAB 354 (1997).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act. Therefore, he has not met his burden of proof to establish that he sustained an emotional condition as a result of conditions of his employment.[17]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 27, 2008 and August 31, 2007 are affirmed.

Issued: October 3, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[17] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).