United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 08-1759**
	)	**Issued: January 8, 2009**
U.S. POSTAL SERVICE, MEMPHIS BULK MAIL CENTER, Memphis, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 30, 2007 and May 28, 2008, finding that he did not sustain an emotional condition 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 appeal.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty on June 27, 2007, as alleged.

FACTUAL HISTORY

On July 4, 2007 appellant, then a 55-year-old mail handler, filed a traumatic injury claim alleging that on June 27, 2007 he sustained job-related stress. During a town hall meeting for tour two employees, Ken Gourdine, a plant manager, removed literature that appellant had placed on tables and called it trash. Appellant submitted a July 2, 2007 report of Anne Ayres,

Ph.D., a psychologist with the Department of Veterans Affairs, which stated that he was being treated for work-related stress. Dr. Ayres placed him off work until July 9, 2007.

By letter dated July 19, 2007, 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 within 30 days to support his claim of injury. Also on July 19, 2007 the Office requested that the employing establishment describe the type of meeting that took place on June 27, 2007, the purpose of the meeting and who held the meeting. It asked whether the employing establishment investigated the incident and requested a statement from the plant manager regarding the incident.

In a July 20, 2007 letter, Betty J. Bowers, a licensed counselor, stated that she had been providing intensive therapy to appellant for work-related stress since July 10, 2007. She opined that it was medically necessary for him to be off work until August 4, 2007 when he could resume full-duty work with no restrictions. Ms. Bowers concluded that it was in the best interest of the employing establishment to provide appellant with proper dignity which he deserved.

In a July 23, 2007 narrative statement, Mr. Gourdine explained that he held a town hall meeting with employees on June 27, 2007 so that they could receive information about the facility. He stated that no investigation of the incident had been conducted. Mr. Gourdine stated that he removed and discarded items from tables in the swing room to highlight the flyers that were developed by management to inform all employees of the upcoming "Harry Potter" mailing scheduled for July 20, 2007.

In a July 24, 2007 letter, Ezzard C. Lott, a supervisor, stated that the purpose of the town hall meeting was to share with employees, information and changes within the plant and employing establishment and to honor employees.

Also on July 24, 2007 appellant stated that the meeting was work related. It was a quarterly meeting held by the plant manager to inform tour two employees about production scores and honor employees. Appellant stated that the literature he distributed was a one and one-half page letter entitled "Mail Handlers Let's Talk." It was critical of the mail handler's elected officials and managers at the bulk mail center. The main focus of the letter concerned steps being taken to address issues with the union and management. Appellant stated that he did not have permission to distribute the literature during the meeting. It was placed on tables by a coworker prior to the meeting. Appellant related that, also prior to the meeting, Von Mitchell, a manager of distribution operations (MDO), returned to him the same aforementioned literature that he had removed from break room tables on June 24, 2007. MDO Mitchell informed him that he had not violated any postal policy by distributing the literature.

In progress notes covering the period January 8, 1996 through July 19, 2007, Dr. Ayres stated that appellant suffered from depressive disorder. In an August 17, 2007 report, Ms. Bowers opined that, based on appellant's history, he suffered from post-traumatic stress disorder that was chronic with delayed onset. She also opined that his mixed adjustment disorder with anxiety and depression as a separate entity were caused by the June 27, 2007 incident.

By decision dated August 30, 2007, the Office denied appellant's claim, finding that he did not sustain an emotional condition in the performance of duty. The evidence failed to establish that the June 27, 2007 incident constituted a compensable factor of his employment.

On September 24, 2007 appellant requested an oral hearing before an Office hearing representative. He contended that Mr. Gourdine abused his authority in removing his literature and calling it trash. Appellant stated that his actions degraded him before his coworkers and were unprofessional. He noted MDO Mitchell's handling of a similar situation. Appellant contended that his coworkers heard Mr. Gourdine call the literature trash.

At the February 28, 2008 hearing, appellant reiterated his contention that Mr. Gourdine's characterization of his literature as trash caused his emotional condition. He testified that Mr. Gourdine refused to return it to him. Appellant also testified that Mr. Gourdine knew that the literature belonged to him because it had his name on it. He stated that on June 27, 2007, his coworkers teased him and made jokes about Mr. Gourdine's actions. Appellant further testified that Mr. Gourdine apologized for his actions following the June 27, 2007 incident although he did not want to talk to him about it. He stated that Mr. Gourdine's managers and supervisors tried to explain his actions.

By decision dated May 28, 2008, an Office hearing representative affirmed the August 30, 2007 decision finding that the evidence failed to establish that the June 27, 2007 incident constituted a compensable factor of appellant's employment.

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.[1] 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.[2]

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*,[3] 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.[4] There are situations where an injury or an illness has some connection with the employment but

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

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

[3] 28 ECAB 125 (1976).

[4] 5 U.S.C. §§ 8101-8193.

nevertheless does not come within the concept or coverage under the Act.[5] 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.[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.

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.[7] 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.[8]

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.[9] 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.[10] 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.[11]

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

[6] *Lillian Cutler, supra* note 3.

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

[8] *Id.*

[9] *Lillian Cutler, supra* note 3.

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

[11] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *see Donna Faye Cardwell, supra* note 2 (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *see Pamela R. Rice, supra* note 1 (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

ANALYSIS

Appellant attributed his emotional condition to being verbally harassed and degraded by Mr. Gourdine, a manager, on June 27, 2007 when he removed and discarded literature he had distributed for a town hall meeting and allegedly called the literature trash. He also attributed his emotional condition to verbal harassment by his coworkers who teased him and made jokes about Mr. Gourdine's actions. The Board notes that verbal abuse or harassment may give rise to coverage under the Act. However, there must be evidence that the implicated acts of harassment did, in fact, occur. A claimant must substantiate a factual basis for his allegation with probative and reliable evidence.[12] Mr. Gourdine acknowledged that he removed and discarded the literature. He wanted to highlight the flyers that were developed by management to inform all employees of the upcoming "Harry Potter" mailing scheduled for July 20, 2007. Mr. Gourdine did not state that he apologized for his actions. Mr. Lott, a supervisor, stated that the purpose of the town hall meeting was to share with employees, information and changes within the plant and employing establishment and to honor employees. An employee's emotional reaction to an administrative or personnel action is not covered absent evidence of error or abuse on the part of his supervisor.[13] The Board finds that Mr. Gourdine's removal and discarding of appellant's literature constitutes an administrative action. Appellant has not submitted sufficient evidence to establish that Mr. Gourdine erred or acted abusively towards him. He did not provide a detailed description of the action taken by him which would support a finding of error or abuse. Although appellant contended that Mr. Gourdine knew the literature belonged to him, the evidence of record does not establish a pattern of verbal abuse or harassment by Mr. Gourdine towards appellant. Moreover, his contention that his coworkers heard Mr. Gourdine call his literature trash and that Mr. Gourdine's supervisors and managers tried to justify his actions has not been established. He did not submit any statements from these witnesses to substantiate his allegations. The Board has held that an employee's mere disagreement with or dislike of the actions taken by a supervisor or manager will not be found compensable absent evidence of record establishing error or abuse.[14] Further, appellant has not established that he was verbally harassed by his coworkers who allegedly teased him and made jokes about Mr. Gourdine removing his literature and calling it trash. He did not submit any statements from witnesses to substantiate his allegation.

The Board finds that appellant has not established his allegation that he was verbally harassed by a supervisor and his coworkers, on June 27, 2007.[15] Accordingly, appellant has not established a compensable factor of employment.[16]

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[12] *See Ronald K. Jablanski*, 56 ECAB 616 (2005).

[13] *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

[14] *See Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

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

[16] As appellant has not substantiated a compensable factor of employment as the cause of her emotional condition, the medical evidence regarding appellant s emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

CONCLUSION

The Board finds that appellant has not established a compensable factor or that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2008 and August 30, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 8, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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