United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 07-1835**
	)	**Issued: December 19, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Greensboro, NC, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 29, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated June 7, 2007 denying his claim for an emotional condition. 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 has established an emotional condition causally related to compensable factors of his federal employment.

FACTUAL HISTORY

On May 23, 206 appellant, then a 42-year-old Family Medical Leave Act (FMLA) coordinator, filed an occupational claim (Form CA-2), alleging that he sustained anxiety as a result of his federal employment. In a narrative statement he discussed specific incidents that he believed caused stress, commencing with an August 2, 1999 incident in which appellant thought a letter carrier was going to harm him. Appellant noted an arbitrator's decision dated May 2,

2001 finding that he should be removed from supervisory duties for one year which he alleged was implemented without appropriate safeguards. He referred to a temporary assignment in 2002, alleged that he was illegally removed from his position in Kernersville and learned that he had no job when he returned from vacation in May 2004. Appellant alleged that on July 6, 2005 Supervisor Gary A. Chriscoe failed to defend him and let the arbitrator's decision possibly be cited against him in the future. On January 30, 2006 Mr. Chriscoe threatened to fire appellant if he did not submit additional medical documentation. On April 13, 2006 Mr. Chriscoe told him "I [a]m going to get you. You are not going to win." On May 4, 2006 he told appellant not to submit any more change of schedule requests and conducted a preinvestigative disciplinary interview in retaliation for filing the compensation claim.

Mr. Chriscoe submitted a May 1, 2006 statement discussing in detail the May 1, 2006 incident. He told appellant it was against employing establishment policy to work more than six hours without a lunch break and asked appellant not to submit change of schedule requests that violated the policy. Mr. Chriscoe stated that it was appellant who said "you are not going to win, I am. I will get you." In a May 25, 2006 statement, he reported that on January 30, 2006 appellant was told his physician's report did not state that he was incapacitated, but since he was requesting FMLA leave, the decision would be made by the FMLA coordinator. With respect to an April 2006 leave request, Mr. Chriscoe indicated that appellant was requesting leave for an entire month and it was necessary to ensure a replacement was available to cover his absence.

In a decision dated November 20, 2006, the Office denied the claim for compensation. It determined that appellant had not established any compensable work factors.

Appellant requested an oral hearing before an Office hearing representative which was held on March 21, 2007. The record includes a November 28, 2006 letter from a union official regarding the January 30, 2006 incident. The union official stated that Mr. Chriscoe told appellant that, if he did not provide medical documentation that stated he was incapacitated then he would be absent without leave (AWOL) and then fired. She stated that she told the supervisor he did not have the authority to disapprove the FMLA request. In his request for a hearing, appellant alleged that on September 25, 2006 Mr. Chriscoe loudly instructed him to get his personal belongings and leave the building. In a March 2, 2007 letter, appellant alleged that in February 2007 the Mr. Chriscoe yelled at him and told him to use his personal credit card for expenses other than travel and hotel accommodations. Appellant alleged that this was a violation of employing establishment policy and enclosed a portion of the employee and labor relations manual.

In a statement dated September 27, 2006, Mr. Chriscoe stated that on September 25, 2006 there was an investigative interview regarding appellant's failure to follow instructions and he was informed he was being removed as FMLA coordinator. He indicated that appellant was told to report to the bulk mail center for assignment. Appellant was also informed that he would be escorted out of the building and could not return without permission. In a May 9, 2007 statement, Mr. Chriscoe stated that there had been numerous complaints against appellant and concern over his mishandling of FMLA cases resulted in his reassignment. With regard to the February 2007 incident, he indicated that appellant had failed to renew his government credit card and the employing establishment was able to put his airline tickets on the corporate credit card and arrange for another employee to put the hotel on the employee's credit card. Appellant

was told he would have to pay for meals on his own, like other employees and be reimbursed on filing an expense report.

The record contains a statement from a union representative, Debra Ford, regarding the September 25, 2006 investigative interview. She stated that Mr. Chriscoe erred in failing to give seven days notice and documenting the reassignment using the proper form. Ms. Ford enclosed a portion of a document stating temporary assignments must be documented using Form 1723.

By decision dated June 7, 2007, the hearing representative affirmed the November 20, 2006 decision. The hearing representative found that appellant had not established any compensable work factors.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.[1] This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[2] A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.[3]

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where 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 Federal Employees' Compensation Act.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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

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

[2] *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

[3] *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

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

not be considered.[5] 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.[6]

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.[7] Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.[8]

ANALYSIS

Appellant filed a claim alleging an emotional condition causally related to his federal employment. As noted above, the first consideration is whether he has alleged and substantiated with probative evidence, a compensable work factor. Appellant's primary allegations in this case appear to relate to actions by his supervisor. An administrative matter will be a compensable factor only if the evidence establishes error or abuse by the employing establishment.

In reviewing the specific incidents alleged, there is insufficient evidence to establish error or abuse in this case. With respect to a January 30, 2006 incident, the evidence indicated that Mr. Chriscoe asked for additional medical documentation. A union official indicated that he stated that appellant could be placed on AWOL and then terminated if he did not have adequate medical evidence. The evidence indicated, however, that Mr. Chriscoe was advised that since this was a leave request under FMLA, it would be handled by a FMLA coordinator. Even he was not in a position to request additional documentation for a FMLA leave request, the evidence does not establish that the statements of Mr. Chriscoe rose to the level of administrative error or abuse. It is well established that not every statement uttered in the workplace will give rise to a compensable work factor.[9] Appellant was not placed on AWOL and the leave request was considered by the appropriate personnel. The Board finds that the record does not establish a compensable factor with respect to a January 30, 2006 incident.

Appellant alleged that on May 1, 2006 his supervisor stated, "I'm going to get you" and that he was subject to retaliation for filing a compensation claim. Mr. Chriscoe provided a detailed statement regarding the May 1, 2006 incident that did not support the allegation. He discussed appellant's requests for schedule changes and noted employing establishment's policy. No probative evidence of error or retaliation was submitted.

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

[6] *Id.*

[7] *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

[8] *Margreate Lublin*, 44 ECAB 945, 956 (1993).

[9] *Judy L. Kahn*, 53 ECAB 321, 326 (2002).

With regard to a September 25, 2006 incident, the evidence does not establish a compensable work factor. Mr. Chriscoe indicated that appellant was removed from his position based on performance. While there is a statement from a union representative that there was administrative error regarding notice and documentation of the reassignment, the evidence of record is not sufficient to establish error. Appellant submitted a brief portion of an employing establishment document stating that temporary assignments must be documented on a specific form, but that is not in itself sufficient to establish error. It is not clear what relevant employing establishment's policies are implicated and there are no findings of error or other probative evidence. The Board finds that appellant has not established a compensable work factor with respect to a September 25, 2006 incident. Appellant also alleged error of employing establishment's policy in a February 2007 incident and provided a brief section of an employing establishment labor relations manual. Mr. Chriscoe discussed the travel incident and the record contains no evidence of error or abuse in this regard.

In his initial statement, appellant noted incidents that did not involve Mr. Chriscoe such as an August 1999 incident involving a letter carrier who he thought was going to physically injure him. Appellant did not provide any other relevant details or supporting evidence. He alleged that he was illegally removed from his position at the Kernersville facility without providing any probative evidence of error.

The Board finds that the record does not substantiate any claim of error or abuse by the employing establishment or other compensable work factor. Since appellant has not established a compensable work factor the Board will not address the medical evidence.[10]

CONCLUSION

Appellant did not meet his burden of proof to establish an emotional condition causally related to compensable work factors. The evidence of record is not sufficient to substantiate a compensable work factor.

[10] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 7, 2007 and November 20, 2006 are affirmed.

Issued: December 19, 2007
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