

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARLEY D. CROSBY and U.S. POSTAL SERVICE,
POST OFFICE, Summerville, SC

*Docket No. 97-2526; Submitted on the Record;
Issued July 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established an injury in the performance of duty on March 28, 1995.

In this case, appellant alleged that he sustained emotional stress and chest pains in the performance of duty on March 28, 1995 when he was ordered to leave his work station. Appellant asserted that his supervisor used an aggressive tone of voice and that there was no acceptable reason for ordering him to leave.

By decision dated July 24, 1995, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established a compensable factor of employment. In a decision dated February 22, 1996, an Office hearing representative affirmed the prior decision. By decisions dated January 3 and May 8, 1997, the Office denied modification of the prior decisions.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty on March 28, 1995.

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 To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric

¹ Pamela R. Rice, 38 ECAB 838 (1987).

disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her 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. 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.³

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵

In this case, appellant has alleged that his removal from the employing establishment on March 28, 1995 was erroneous and abusive. The record contains a statement from a supervisor indicating that appellant reported to work at 3:30 a.m. on March 28, 1995 and was informed that the postmaster had left a message on appellant's answering machine that he was not to report until further notice. The supervisor explained that appellant needed additional medical documentation regarding his return to work. Appellant then spoke to the postmaster on a speaker phone and the postmaster asked appellant to leave the building. Appellant stated that he was not going to leave the building. Shortly thereafter, the police arrived and appellant indicated that he was going to drive himself to seek medical treatment.

Appellant alleges that it was error to require him to leave the building because he had submitted a medical report, which allowed him to return to work and the supervisors had violated employing establishment regulations by requiring him to leave. The evidence of record, however, does not establish a clear violation of any procedure pertaining to securing medical documentation. A provision in an employing establishment handbook indicates that employees returning to duty for mental or nervous conditions must provide a physicians statement, which must be approved by an employing establishment medical officer "where available." Another provision indicates that an employee returning to duty after 21 days or more of absence, as in

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

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

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

this case, must submit medical evidence of ability to work and then such medical evidence will be reviewed by a medical office or contract physician to assist management in the placement of jobs. This allows a supervisor to keep an employee from returning to work until the medical evidence has been reviewed by a medical officer or contract physician. In a statement dated July 11, 1995, the postmaster indicated that the reason appellant was told not to report to work was due to a pending review of the medical evidence he had submitted. There is a second employing establishment regulation which states that in cases of occupational illness an employee "will be returned to work" on certification from the treating physician and then the medical reports will be reviewed as soon as possible by a medical officer or contract physician. In the absence of other probative evidence, the Board cannot find that the administrative decision of March 28, 1995 to order appellant to leave the building was a violation of employing establishment procedures or otherwise constituted error or abuse.

Appellant has also alleged error in the administrative decision to contact the police to escort him from the building. The evidence of record, however, indicates that appellant did state to the postmaster that he was not going to leave the building. Based on the available evidence, it cannot be established that the employing establishment acted unreasonably in contacting the police on March 28, 1995.

Appellant has also alleged error by the employing establishment in placing him on enforced leave as of March 24, 1995. A decision dated April 1, 1997 from the Merit Systems Protection Board (MSPB) found that the employing establishment erred in failing to give appellant notice or an opportunity to respond prior to being placed on enforced leave. Accordingly, the Board finds that appellant has established a compensable factor of employment.

In order to meet his burden of proof appellant must submit probative medical evidence on causal relationship between a compensable factor of employment and a diagnosed condition. Appellant has not submitted any medical evidence containing a reasoned opinion, based on a complete background, that establishes causal relationship between a diagnosed condition and the identified compensable work factor in this case. The medical evidence of record is limited to appellant's ability to return to work on March 24, 1995 and an undated report from Dr. L. Randolph Waid, a clinical psychologist, which does not address the specific issue of causal relationship presented. The Board, therefore, finds that he has not met his burden of proof in establishing his claim.

The decision of the Office of Workers' Compensation Programs dated May 8, 1997 is modified to reflect that a compensable work factor has been established and is affirmed as modified.

Dated, Washington, D.C.
July 26, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member