

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES BRYAN PAYNE and U.S. POSTAL SERVICE,
FOUNTAIN CITY STATION, Knoxville, TN

*Docket No. 99-668; Submitted on the Record;
Issued August 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On March 9, 1998 appellant, then a 50-year-old rural letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from depression as a result of ongoing problems with the employing establishment. The employing establishment controverted appellant's claim.

In response to a March 31, 1998 request from the Office of Workers' Compensation Programs for further information, appellant wrote a letter wherein he outlined the employing factors that he contended resulted in his emotional condition. The employing establishment rebutted appellant's allegations in a letter dated April 21, 1998.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof in this case.

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 of coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹

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

¹ 5 U.S.C. §§ 8101-8193.

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.² 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.³

Furthermore, appellant 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 employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated September 14, 1998, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. Thus, the Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the Act.

Regarding appellant's allegations that management underpaid him by deliberately under measuring the mileage for his route, that he was not allowed to participate in the adjustment of his route, that management continually played music that he did not like, that the building where he worked was too hot, that the management team was incompetent,⁶ and that a mistake was made on his annual leave, the Board finds that these allegations relate to administrative or personnel matters, unrelated to appellant's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷ 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.⁸ Appellant has provided insufficient

² See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

³ *Id.*

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ In support of his claim that management was incompetent, appellant noted an incident where the Christmas mail was light and instead of waiting for the other mail to arrive, management instructed all carriers to withdraw their mail from the case and deliver what they had and that this resulted in the mail being delayed. He also alleged that management told him that patrons were complaining about outgoing mail not being picked up and the management team did not deal with this complaint in a logical manner. Finally, appellant alleged that management improperly handled an incident where he ran over a patron's flowerbed.

⁷ See *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 See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

evidence that the employing establishment erred or acted abusively regarding these allegations. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has alleged harassment and discrimination on the part of his supervisors. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁹ However, for harassment or discrimination 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.¹⁰ In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors. Appellant alleged that he has been called names, bad mouthed in a loud voice so that other employees could overhear and been slandered by postal management, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹¹ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

The Board finds that appellant has offered no corroborating evidence for the following allegations and accordingly, the Board finds that appellant has not met his burden in establishing that they occurred, that appellant had been unable to get current and correct address labels for his route, that there were problems between him and the relief carrier in that the relief carrier did not case his mail properly and that the employing establishment took improper punitive actions against appellant.

Appellant also alleged that government and private vehicles were allowed to idle their engines outside the building near the side door where employees enter and that he worked very close to this door and that the fumes caused him serious headaches and sinus problems. Although appellant's allegation that vehicles were allowed to idle outside the door was corroborated by the evidence submitted by the employing establishment and is, therefore, an accepted factor of employment, appellant submitted no medical evidence that this caused him to have headaches or sinus problems.

For the foregoing reasons, appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹²

The decision of the Office of Workers' Compensation Programs dated September 14, 1998 is affirmed.

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹² As appellant has not established any compensable employment factor, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

Dated, Washington, D.C.
August 22, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member