

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER M. LAWSON and U.S. POSTAL SERVICE,
POST OFFICE, Richland, WA

*Docket No. 99-1280; Submitted on the Record;
Issued September 18, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty, causally related to factors of his federal employment.

On December 4, 1996 appellant, then a 47-year-old part-time flexible mail carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that stress during his federal employment aggravated his preexisting post-traumatic stress disorder. The employing establishment controverted the claim, contending that appellant has a well-documented preexisting condition that has not been worsened by his federal employment.

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 of Workers' Compensation Programs, 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.² If a

¹ 5 U.S.C. §§ 8101-8193.

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

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

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

By decision dated June 9, 1997, the Office denied appellant's claim, finding that appellant had not alleged any compensable factors of employment, and therefore, failed to establish that his emotional condition arose in the performance of duty. Appellant requested a hearing, and in a decision dated July 13, 1998, the hearing representative found that the evidence failed to support that appellant's post-traumatic stress disorder was caused, aggravated or exacerbated by his federal employment.

It is undisputed that appellant suffers from post-traumatic stress disorder due to his military service during the Vietnam War. The question is whether compensable factors of appellant's employment aggravated or exacerbated this condition. Thus, the Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the Act.

Appellant alleged that a number of employment incidents and conditions resulted in a hostile work environment. There were various problems regarding his scheduling of medical appointments,⁶ his schedule was changed at the last minute causing confusion as to which days he worked,⁷ he was not promptly told whether he got the schedule he requested and he was made to work despite being sick. The Board finds that these allegations concern administrative or personnel matters unrelated to appellant's regular or specially assigned work duties and thus do not fall within the coverage of the Act.⁸

³ *Id.*

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

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

⁶ There was a dispute between management and appellant as to the timing of these appointments. Management contended that appellant scheduled these appointments during the employing establishment's busiest times, *i.e.*, Mondays and days after holidays. Appellant denied this. Furthermore, there was a dispute as to how much time appellant should be allotted for travel to these appointments.

⁷ In support of this contention, appellant submitted notes from two coworkers.

⁸ 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).

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.⁹ Appellant has provided insufficient evidence that the employing establishment erred or acted abusively regarding these allegations. Thus, appellant has not established a compensable factor under the Act in this respect.

Appellant also alleged harassment and discrimination on the part of his supervisors. Disputes and incidents alleged as constituting harassment and discrimination by supervisors could constitute employment factors if established as occurring and arising from appellant's performance of his regular duties.¹⁰ 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.¹¹

In this case, appellant alleged that ever since he was diagnosed with post-traumatic stress syndrome in 1995, the employing establishment discriminated against him by reducing his hours, giving him the worst hours, providing more hours to other employees even though he had seniority and singling him out with regard to attendance problems. The employing establishment denied that appellant was subjected to harassment, and appellant has not submitted evidence sufficient to establish that he was harassed or discriminated against by his supervisors. 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 his allegation that he had to work until 7:45 p.m. one evening when the temperature was 12 degrees below 0, while other employees were given assistance to finish their routes earlier. The Board further finds that appellant failed to submit sufficient evidence to support his allegations of a hostile work environment. The statements by two of appellant's coworkers were refuted by the employing establishment, which noted that one of the grievances was settled with the union agreeing that the employee's rights were not violated, and that the other employee chose to resign rather than face disciplinary action for inappropriate behavior. Furthermore, the employing establishment submitted statements from other employees negating the existence of a hostile work environment.

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 July 13, 1998 decision of the Office of Workers' Compensation Programs is affirmed.¹³

⁹ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² As appellant has failed to allege a compensable factor of employment substantiated by the record, the medical evidence need not be discussed. See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

Dated, Washington, DC
September 18, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹³ The Board may not consider the new evidence submitted by appellant after the Office issued its July 13, 1998 decision as the Board's jurisdiction is limited to that evidence which was before the Office at the time it rendered the final decision. *Betty J. Parker*, 46 ECAB 920, 923 n. 8 (1995).