U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ABNER P. AGNANT and U.S. POSTAL SERVICE,
NORLAND POST OFFICE, Miami, FL

Docket No. 00-2385; Submitted on the Record;
Issued December 5, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant established that he sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained an emotional condition while in the performance of duty.

On March 1, 1999 appellant, then a 52-year-old letter carrier, filed a claim for an occupational disease alleging that he first realized that his severe depression was caused or aggravated by the employing establishment's denial of his requests for a transfer in 1994 and 1995.

By decision dated July 27, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty. In a March 3, 2000 letter, appellant, through his representative, requested reconsideration of the Office's decision.

By decision dated May 10, 2000, the Office denied appellant's request for a merit review of his claim.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the

employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.[1]

Perceptions and feelings alone are not compensable. 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 factors of his federal employment.[2] To establish his claim that he 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 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.[3]

Appellant has alleged that his emotional condition was caused by the employing establishment's denial of his 1994 and 1995 request for a transfer. In a February 23, 1999 narrative statement, he indicated that he traveled approximately 180 miles round trip from his home in West Palm Beach, Florida to the employing establishment in Miami, Florida. Appellant stated that his 1995 request for a transfer was denied by the West Palm Beach office due to errors committed by the Miami office. He alleged that, as a result of the denial of his request for a transfer and management's lack of concern for his hardship in traveling 180 miles daily, he developed an emotional condition. The denial by an employing establishment of a request for a different job, promotion or transfer is an administrative decision, which does not directly involve an employee's ability to perform his work duties, but rather constitutes an employee's desire to work in a different position.[4] The Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.[5] As the denial of appellant's request for a transfer is an administrative decision, absent error or abuse in the decision making process, this allegation is not compensable. Appellant did not submit any evidence establishing that the employing establishment committed error or abuse in denying his requests for a transfer.[6]

Further, appellant's allegation regarding his 180-mile daily commute to work involves an administrative matter.[7] In a March 3, 1999 narrative statement, Zelenkofske Manager, an employing establishment employee, indicated that appellant transferred from the employing establishment office in New York to Miami, Florida. The Board finds that appellant's emotional

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

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

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

[4] *See Donna J. DiBernardo*, 47 ECAB 700 (1996).

[5] *Id*.

[6] The record reveals that appellant was subsequently transferred to another employing establishment office in Miami, Florida, which was located 10 miles closer to his home in West Palm Beach, Florida.

[7] *Adele Garafolo*, 43 ECAB 169 (1991).

condition does not arise out of and in the course of appellant's employment. The record does not establish that appellant's actual employment duties required him to travel on the highways between his home in West Palm Beach, Florida and the employing establishment located in Miami, Florida on a daily basis. The stress and strain of highway travel experienced by appellant can be characterized as self-generated and arising from the hazards of the journey shared in common by all travelers.[8] Appellant has therefore not established that his emotional condition was sustained within the performance of duty within the meaning of the Act, as alleged.

Inasmuch as appellant did not establish that his emotional condition was caused by a compensable factor of employment under the Act, there was no need for the Office to address the medical evidence of record at the time of its decision.[9]

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[10] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[11] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[12] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[13]

In support of his request for reconsideration, appellant submitted a report dated February 10, 2000 from Dr. Harvey A. Klein, a licensed clinical psychologist, who stated that appellant had serious problems with anxiety and concentration. Dr. Klein further stated that appellant's emotional condition had deteriorated due to the denial of his request for a transfer and commute to work. As found above, the denial of appellant's requests for a transfer and appellant's commute to work involve administrative matters, which do not constitute compensable factors of employment under the Act. Dr. Klein did not address whether appellant's emotional condition was caused by compensable factors of employment. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[14] Further, Dr. Klein's opinion that appellant's emotional condition was caused by the

[8] *Id.*

[9] *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

[10] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b)(1)-(2).

[12] *Id*. at. § 10.607(a).

[13] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[14] *See Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

above administrative matters, is repetitive of his previous reports already of record. The Board has held that material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[15] For these reasons, Dr. Klein's report is insufficient to warrant a basis for reopening appellant's claim.

Because appellant has failed to submit any new relevant and pertinent evidence not previously reviewed by the Office and further failed to raise any substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The May 10, 2000 and July 27, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[15] *James A. England*, 47 ECAB 115 (1995).