U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL H. COMER and U.S. POSTAL SERVICE,
POST OFFICE, Toledo, OH

Docket No. 01-730; Submitted on the Record;
Issued December 20, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On June 16, 2000 appellant, then a 51-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he developed an emotional condition as a result of a stressful work environment which resulted in anxiety and depression. Appellant stopped working on June 10, 2000 and did not return.

Accompanying appellant's claim was a letter from Dr. Marilyn S. Clendening, a Board-certified family practitioner, dated June 19, 2000; and a narrative statement. Dr. Clendening's letter indicated that appellant presented on June 12, 2000 with complaints of anxiety. She indicated that appellant had been unable to eat or sleep for two days due to increasing stress at work. Dr. Clendening noted the physical examination was essentially normal except for elevated blood pressure. He diagnosed appellant with anxiety and depression. She recommended that appellant take a leave of absence for three weeks. Dr. Clendening indicated that appellant had not been seen for depression in the past and noted that this problem was directly caused by his employment situation.

Appellant's statement raised the following allegations: (1) the supervisor arbitrarily changed his previously agreed upon leaving time to begin delivering mail by 10 minutes; (2) the supervisor frequently questioned appellant about his leaving time; (3) the supervisor performed two mail counts on his route without the proper prior notification; (4) the supervisor observed appellant throwing mail; (5) the supervisor failed to advise appellant of the results of the mail count; (6) the supervisor sent an acting supervisor to observe appellant's street performance; (7) the supervisor did not disclose the results of all observation forms; (8) on June 10, 2000, the supervisor performed another mail count, instructed appellant to process mail without using overtime and ordered appellant not to leave the office to deliver mail until 9:10am.

In a letter dated July 17, 2000, the Office of Workers' Compensation Programs advised appellant that the evidence submitted in support of his claim was insufficient to establish his claim. The Office advised appellant of the type of evidence needed to establish his claim and requested he submit such evidence.

Thereafter, appellant submitted a warning letter from the employing establishment dated June 15, 2000; a note from Dr. Clendening dated July 3, 2000; a copy of appellant's grievance form dated July 20, 2000; a return to work certificate from Dr. Rajnikant Kothari, a Board-certified psychiatrist dated July 25, 2000; a letter from Dr. Kothari, dated July 27, 2000; and a narrative statement from appellant dated July 28, 2000. The warning letter from the employing establishment indicated that appellant was cited for unsatisfactory performance on June 10, 2000. Appellant's supervisor noted that appellant was instructed to take all the mail assigned to him without using overtime and to leave the post office at 9:10 am. Appellant failed to follow these instructions, left 365 flats and left for the street at 9:00 am instead of 9:10 am. The note from Dr. Clendening dated July 3, 2000 indicated appellant would be off work indefinitely. The grievance filed by appellant on July 20, 2000 noted that on June 15, 2000 he was wrongly issued a letter of warning. Appellant indicated that he committed no violation and the punishment was punitive. The return to work certificate from Dr. Kothari indicated appellant was absent from work from June 12 to July 29, 2000. Dr. Kothari noted appellant was being treated for major depressive disorder and was hospitalized from June 30 to July 7, 2000. His July 27, 2000 letter noted that appellant had no previous history of psychiatric or emotional difficulties until working under the direction of the current supervisor. Dr. Kothari indicated that appellant's diagnosis of major depression was directly related to the stressors of working under the direction of his current supervisor. The narrative statement from appellant noted that there had been several other people at the employing establishment who complained about the supervisors' treatment of employees. He noted being admitted to a psychiatric hospital for treatment of anxiety. Appellant indicated that he had never been treated for anxiety up to this point.

In a July 10, 2000 letter, appellant's supervisor indicated that appellant was questioned regarding his daily leaving time of 9:00 am instead of 9:10 am on May 25, 2000 and appellant indicated that an agreement was made with his manager and union representative which permitted him to leave at this time. The supervisor noted that on June 8, 2000 appellant was informed by his manager that he was to leave the employing establishment at 9:10 am to deliver mail. On June 9 and 10, 2001 appellant left at 9:00 am and the supervisor submitted documentation confirming appellant's leave time. The supervisor noted that appellant failed to follow instructions and was issued a letter of warning. She also indicated that on May 22, 2000 street observations were conducted on three to four routes, including appellant's. The supervisor submitted documents referencing the street observations that were conducted. She also indicated that appellant's allegation that she counted his mail on or about May 6, 2000 was not accurate, as she was not scheduled to work that day. The supervisor noted she had conducted several mail counts on routes other than appellant's in the previous months. She indicated that on June 12, 2000 appellant called in sick; however, he was unsure what was wrong with him or if it was work related. The supervisor further indicated that she believed appellant was trying to find a way out of the disciplinary action taken against him on June 9 and 10, 2000.

By decision dated December 6, 2000, the Office denied appellant's claim for compensation on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

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 or 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] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

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.[3] 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.[4]

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 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.[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]

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[6] *Id.*

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 December 6, 2000, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged harassment on the part of his supervisor. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[7] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[8] In the present case, the employing establishment admitted that appellant was questioned regarding his daily leaving time of 9:00 am instead of 9:10 am on May 25, 2000 and that on June 15, 2000 appellant was issued a letter of warning for not following instructions. However, general allegations of harassment are not sufficient[9] and appellant has not detailed specific instances of harassment. Appellant has not submitted sufficient evidence to establish that he was harassed by his supervisor.[10] He alleged that his supervisor made statements and engaged in actions, which he believed constituted harassment, 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.

Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,[12] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing with the appellant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: The supervisor arbitrarily changing appellant's previously agreed upon leaving time to begin delivering mail by

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

[8] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[9] S*ee Paul Trotman-Hall*, 45 ECAB 229 (1993).

[10] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

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

[12] *See Thomas D. McEuen*, supra note 2.

10 minutes;[13] the supervisor questioned appellant about his leaving time;[14] the supervisor performing two mail counts on his route without the proper prior notification;[15] the supervisor observing appellant throwing mail;[16] the supervisor sending an acting supervisor to observe appellant's street performance;[17] and on June 10, 2000, the supervisor performed another mail count,[18] instructed appellant to process mail without using overtime[19] and instructed appellant to not leave the office to deliver mail until 9:10 am;[20] the supervisor did not disclose the results of all observation forms;[21] and the supervisor failed to advise appellant of the results of the mail count.[22] The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus he has not established administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

[13] *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).

[14] *Id.*

[15] *See John Polito*, 50 ECAB 347 (1999). (Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. Appellant did not submit evidence supporting his claims that the employing establishment committed error or abuse in monitoring work activities such that he did not establish a compensable employment factor.)

[16] *Id.*

[17] *Id*.

[18] *Id*.

[19] *See Robert Knoke*, 51 ECAB ___ (Docket No. 98-46, issued February 2, 2000) (a reaction to instruction itself would not be compensable, as the Board has held that work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity).

[20] *Id.*

[21] *See Marguerite J. Toland*, 52 ECAB ___ (Docket No. 99-1989, issued March 9, 2001). (An employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by the FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.)

[22] *Id.*

The decision of the Office of Workers' Compensation Programs dated December 6, 2000 is affirmed.

Dated, Washington, DC
December 20, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member