U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. MARTINKO and U.S. POSTAL SERVICE,
POST OFFICE, Poughkeepsie, NY

Docket No. 99-996; Submitted on the Record;
Issued March 21, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant established that his coronary artery disease was sustained in the performance of duty; and (2) whether appellant established that he sustained an emotional condition in the performance of duty.

On August 28, 1997 appellant, a 51-year-old letter carrier, filed an occupational disease claim alleging that factors of his employment occurring on January 24, 1997 caused emotional stress and anxiety which exacerbated his preexisting coronary artery disease and a post-traumatic stress disorder. In an undated statement accompanying the claim, he noted that he underwent open-heart surgery on May 5, 1991 and that on July 3, 1996 he requested to be placed on limited duty due to his coronary artery disease. Appellant stated that, on that date, his treating physician, Dr. Ronald J. Tatelbaum, Board-certified in internal medicine, gave him a note which indicated that he could work no more than eight hours per day. He alleged, however, that his supervisors denied his request and forced him to exceed Dr. Tatelbaum's physical restrictions. Appellant claimed that his supervisors pressured him to work harder despite the fact that he was under a great deal of stress. He experienced chest pains on January 24, 1997. Appellant further claimed that his supervisors showed a lack of concern for his disability by taking away his morning router, who helped case his mail for one and one half hours during his morning shift. He asserted that he experienced a loss of dignity because his supervisors questioned his requests for assistance with the daily volume of mail, giving him less assistance than he needed and requesting that he work beyond his physical limitations. Appellant stated that he skipped several breaks and shortened his lunch period in an attempt to work no less than eight hours per day and to avoid management's harassment and pressure. He has not worked since January 24, 1997.

In a treatment note dated February 4, 1997, Dr. Gabrielle J. Wolfsberger, a specialist in family practice, diagnosed coronary artery disease, stated that appellant was unable to return to work for 30 more days, and advised that he avoid a stressful environment. In a report dated February 25, 1997, Dr. Wolfsberger indicated that appellant had a history of coronary artery disease and was status post bypass surgery. She stated that appellant had complained since January 1997 that, whenever he was on his route or at work, he developed retrosternal chest pain

and became very concerned about having a cardiac event while at work. Dr. Wolfsberger stated that "since [appellant] appears to suffer from severe stress-related symptoms and these symptoms are exacerbated by the knowledge that he has coronary artery disease I recommend that he take some time off from work so that he can recuperate from the present symptomatology."

In a treatment note dated March 20, 1997, Dr. Wolfsberger extended appellant's period of disability until May 1, 1997.

In a report dated April 11, 1997, Dr. Margaret M. Cioffi, a specialist in psychiatry, stated that she was treating appellant for post-traumatic stress disorder, and advised that he was unable to return to work until July 30, 1997.

In a report dated July 24, 1997, Dr. Harry L. Odabashian, Board-certified in internal medicine and a specialist in cardiovascular disease, noted appellant had undergone bypass surgery and subsequently developed a thrombosis of the saphenous vein graft to the circumflex artery. Appellant underwent repeat catheterization which showed total occlusion of the saphenous vein bypass to the circumflex artery. Dr. Odabashian advised that appellant was presently doing well but was quite anxious about work and "this causes him to have chest pain, and he is embroiled in a controversy with [the employing establishment] where he works." He stated that "it should be noted that [appellant's] chest pain, or angina pectoris, is not induced by exercise, but rather by stress, and this is precipitated by his work." Dr. Odabashian stated that appellant was disabled secondary to his angina pectoris induced by stress on the job.

In a report dated August 1, 1997, Dr. Cioffi stated that appellant's symptoms of post-traumatic stress disorder were exacerbated and aggravated by the abrasive conditions at work. She indicated appellant's cardiac disability was directly and causally related to the psychological stressors at his workplace and these later conditions were obstructing his treatment for post-traumatic stress disorder.

Appellant also submitted three treatment reports from 1997 from Eileen Robertson, a psychological counselor, who noted that he was being seen weekly for individual psychotherapy for symptom reduction and treatment of post-traumatic stress disorder. She noted that appellant reported symptoms progressive since July 1996 in response to problems at his place of employment. The psychologist stated that appellant reported feeling helpless when his supervisors began changing his duties because they would not allow his input. She also reported incidents of harassment, which caused appellant to fear for his job and he responded by working harder and trying harder. The psychologist noted that appellant experienced cardiac irregularities in July 1996 which he attributed to stress, and considered him totally disabled.

By letter dated October 14, 1997, the Office of Workers' Compensation Programs advised appellant that it required additional evidence in support of his claim.

Appellant submitted a July 3, 1996 treatment note from Dr. Russell R. Fiore, Board-certified in internal medicine and a specialist in cardiovascular disease, who stated that appellant was under his care and unable to return to work until all tests were completed. A July 3, 1996 treatment note from Dr. Tatelbaum stated that appellant could return to work effective July 5, 1996, provided he only worked an eight-hour shift. A July 3, 1996 note from Dr. Tatelbaum

stated that appellant could perform all his normal duties as a letter carrier and that he could work eight hours per day, seven days per week.

The employing establishment rebutted appellant's allegations in a September 27, 1997 letter from postmaster Thomas Nucifore, who stated that he was never shown the July 3, 1996 report and disability certificate from Dr. Tatelbaum. He stated that, had he seen such a note, he would have submitted it to the medical unit for evaluation and requested a fitness-for-duty examination.[1] Mr. Nucifore stated that he recalled appellant voluntarily changed his route assignment through the accepted bid process and that another supervisor told him that appellant had changed the line of travel on his route without authorization. He recalled several conversations with appellant's supervisors about his performance and excessive use of office work hours and street hours to complete his assignments. Mr. Nucifore stated that, if appellant extended his workday beyond eight hours, it was through his own actions, not through those of his supervisors. He stated that appellant was questioned routinely about his performance as any carrier would be who was using excessive time, and that appellant was not treated differently from other carriers. Mr. Nucifore stated that appellant self-imposed eight hours in order to leave work early to attend baseball games, in which he was an umpire.

In a decision dated March 11, 1998, the Office denied appellant's claim, finding that appellant failed to submit evidence sufficient to establish that his claimed post-traumatic stress disorder and emotional conditions were causally related to employment factors.

By letter dated April 6, 1998, appellant requested an oral hearing, which was held on October 20, 1998.

At the hearing, appellant testified that he had router assistance in the morning until mid-December 1996 when it was changed to the afternoon. He testified that he complained to his union steward and tried to deliver all his mail within an eight-hour period, which his doctors had stated in notes to management was the maximum he should be working during the day. Appellant also denied that the eight-hour restriction was imposed so that he could leave work early to umpire baseball games.

Appellant alleged that supervisor Ted Poznak threatened him with a letter of warning for exceeding his unit time. He testified that he would commence his route after 10:00 a.m. and would not return until 4:30 p.m. and that there were times when he worked more than eight hours per day, maybe five minutes here and ten minutes there. Appellant also asserted that, after he sent in medical documentation for his absence subsequent to January 23, 1997, his last day of work, the employing establishment sent him a letter threatening his removal for failure to send in proper medical documentation. He testified that this letter was so stressful that he was admitted to the hospital for the weekend.

A coworker of appellant's, William Shay, testified at the hearing that appellant had complained to him when the router assistance was changed from morning to afternoon and management told him that he still had to leave to deliver mail by 10:15 a.m. each day. Mr. Shay

[1] Mr. Nucifore recommended a review of the medical files to determine whether appellant actually showed Dr. Tatelbaum's letter to the medical unit.

stated that he spoke to Mr. Poznak and another supervisor about appellant's situation, but they refused to change it. He testified that he believed management did this as retaliation for a grievance appellant had filed over not being allowed to return to work until he was able to work full time with no restrictions following an October 1995 knee injury.

Subsequent to the hearing, appellant submitted an October 13, 1998 treatment note from Dr. Tatelbaum, which was issued as an addendum to his letter releasing appellant to return to work on July 3, 1996. Dr. Tatelbaum stated that, due to the stress of the job, it was medically indicated that appellant could only work eight hours per day, seven days per week when he returned to work on July 3, 1996. Appellant also submitted an October 8, 1998 treatment note from Dr. Wolfsberger clarifying her previous statement of February 4, 1997 that appellant needed to avoid a stressful environment. He stated that the stressful environment "relates directly to [the employing establishment], was actual, emotional and physical."

By decision dated December 14, 1998, an Office hearing representative affirmed the March 11, 1998 decision. Although the hearing representative found that the employing establishment committed administrative error by refusing to allow appellant to return to light duty on October 30, 1995 and by requiring him to work overtime on January 15 and 21, 1997, he concluded that the medical evidence appellant submitted was not sufficient to establish that he sustained an emotional condition in the performance of duty. The hearing representative also found that appellant failed to submit medical evidence sufficient to establish that his coronary artery condition was caused or aggravated by factors of his federal employment.

The Board finds that appellant failed to meet his burden of proof to establish that his coronary artery disease was sustained in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability, and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.[6]

In the present case, appellant has submitted insufficient medical evidence to establish that his coronary artery disease was caused or aggravated by factors of his federal employment. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[7] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. In the instant case, none of the medical reports pertaining to the claimed condition contain any rationalized medical opinion, which relates the cause of this claimed condition to factors of his employment.

The reports from Drs. Tatelbaum, Wolfsberger, Odabashian and Fiore do not constitute sufficient medical evidence demonstrating that appellant's preexisting coronary artery disease was aggravated by factors of his employment. The reports from these physicians merely state findings that appellant's preexisting coronary artery disease caused chest pains or angina pectoris. However, none of these reports show appellant was disabled by any stress that he alleged he experienced as opposed to the normal progression of his preexisting coronary disease.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's preexisting coronary artery disease was aggravated by factors of his employment causing disability for work, appellant has not met his burden of proof in establishing that he sustained aggravation of his coronary artery disease in the performance of duty. The Board therefore affirms the Office's finding that appellant did not sustain a compensable physical condition or disability.

---

[5] *Id.*

[6] *Arlonia B. Taylor*, 44 ECAB 591, 595 (1993).

[7] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[8] *Id.*

The Board further finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.[9] On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.[10]

A claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[11] The Board has underscored that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable 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.[12] The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.[13]

With regard to his allegations of harassment, it is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable. The Board finds that appellant has failed to submit sufficient evidence to establish his allegations that the employing establishment engaged in a pattern of harassment. Appellant has alleged, in general terms, harassment on the part of the employing establishment, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the allegations. Verbal altercations, when sufficiently detailed and supported by the evidence of record, may constitute a factor of employment.[14]

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

[10] *Id.*

[11] *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[12] *Norma L. Blank*, 43 ECAB 384 (1992).

[13] *Id.*

[14] *See David W. Shirey*, 42 ECAB 783 (1991).

However, appellant did not provide details of specific verbal altercations, as he made only general allegations. In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination, and appellant has not submitted any evidence corroborating that he was harassed or discriminated against by the employing establishment, with regard to promotions, assignments or disciplinary actions.[15] Thus, the July 5, 1997 letter from the employing establishment's director of customer service directing him to report for duty immediately or face disciplinary action is not compensable; nor are the admonitions and counseling from his supervisors to complete his work within prescribed time periods.

With regard to appellant's allegations that he was reassigned to another bid route in July 1996, the Board notes that the assignment of a work schedule is an administrative function and is not considered a compensable factor of employment absent demonstrated error or abuse.[16] The evidence of record does not establish any error or abuse on the part of the employing establishment with regard to assignment of appellant's work schedule. The Board finds that this amounts to frustration at not being permitted to work in a particular environment and is not a compensable factor under the circumstances of this case. Further, the evaluation of appellant's performance, checking to ensure that appellant was performing his duties in a satisfactory manner, will not give rise to a compensable disability absent error or abuse in these administrative matters.[17]

Appellant's allegation that the employing establishment forced him to work in excess of eight hours per day on a regular basis was denied by the employing establishment and appellant has not substantiated that this actually occurred.[18]

The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.[19] However, error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.[20] In the present case, there is no evidence of record to substantiate appellant's allegations of error or irregularity in being counseled about not abusing sick leave.[21]

---

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

[16] *Alice M. Washington*, 46 ECAB 382 (1994); *see also Peggy R. Lee*, 46 ECAB 527 (1995).

[17] *See Helen Casillas*, 46 ECAB 1044 (1995).

[18] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his allegations with probative reliable evidence. *Ruthie M. Evans*, 41 ECAB 416 (1990).

[19] *Elizabeth Pinero*, 46 ECAB 123 (1994).

[20] *Margreate Lublin*, 44 ECAB 945 (1993).

[21] *Drew A. Weismuller*, 43 ECAB 745 (1992); *Kathi A. Scarnato*, 43 ECAB 220 (1991).

The Board finds that appellant has established factors of employment which may have resulted in a compensable emotional condition based on the following incidents; *i.e.*, the employing establishment's refusal to allow appellant to return to light duty on October 30, 1995 and its requiring him to work overtime on January 15 and 21, 1997. As the hearing representative found, these incidents constituted unreasonable actions in the administration of personnel matters by the employing establishment.

However, appellant's burden of proof is not discharged by the fact that he has identified employment factors, which may have given rise to a compensable disability under the Act. Appellant also has the burden of submitting sufficient medical evidence to support his claim that the employing establishment's unreasonable actions in the administration of a personnel matter resulted in an employment-related emotional condition.[22]

The Board finds that appellant failed to submit medical evidence sufficient to establish that the employing establishment's unreasonable actions resulted in an employment-related emotional condition. Causal relationship must be established by rationalized medical opinion evidence. The only medical evidence appellant submitted in support of his claim based on an emotional condition consisted of the April 11, 1997 treatment note and August 1, 1997 report from Dr. Cioffi, who merely diagnosed post-traumatic stress disorder and stated summarily that appellant's symptoms were exacerbated and aggravated by abrasive conditions at work, which were obstructing his treatment for the condition. Dr. Cioffi's opinion on causal relationship is of limited probative value in that she did not provide adequate medical rationale in support of her conclusions.[23] She did not describe the process through which appellant's work incidents would have been competent to cause the claimed emotional condition. Her opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that she only stated summarily that appellant's emotional problems were causally related to factors of his employment. Finally, the reports from Ms. Robertson do not constitute medical evidence, as she is not a physician pursuant to section 8101(2).[24]

As appellant has failed to provide a probative, rationalized medical opinion in support of his allegation that he sustained a specific emotional injury due to factors of his employment, the Board affirms the Office's finding that appellant failed to establish that he sustained an emotional condition in the performance of duty.

[22] *Chester R. Henderson*, 42 ECAB 352 (1991).

[23] *William C. Thomas*, 45 ECAB 591 (1994).

[24] 5 U.S.C. § 8101(2).

The decisions of the Office of Workers' Compensation Programs dated March 11 and December 14, 1998 are therefore affirmed in accordance with this decision.

Dated, Washington, DC
March 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member