

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. WEAVER and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 01-1129; Submitted on the Record;
Issued May 8, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On August 21, 1998 appellant, then a 42-year-old letter carrier, filed a claim alleging that he developed an emotional condition as a result of a stressful work environment, which resulted in anxiety and depression. Appellant was on administrative leave from June 8 to July 26, 1998 and leave due to his alleged disability from July 27 to September 7, 1998.

Accompanying appellant's claim was a letter and a narrative statement from Dr. Louis Schippers, a psychologist, who indicated that appellant was being treated for job-related stress. Dr. Schippers noted that appellant experienced agitation, anxiety and depression following an incident at work, which resulted in an investigation and appellant taking a leave of absence. He recommended appellant return to work in September 1998. Appellant's narrative statement indicated that he was forced out of work and placed on emergency off-duty status because three mailbags were stolen from his postal vehicle. He noted that these incidences caused him agitation, anxiety and depression. Appellant further indicated that the employing establishment was aware of the faulty locks on the postal vehicle.

In a letter dated September 18, 1998, 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.

In a letter dated October 7, 1998, appellant's supervisor noted that he provided conflicting dates on the CA-2, regarding his inability to work. The supervisor noted that appellant was unable to work since July 27, 1998. When appellant failed to report for duty the supervisor attempted to contact him by telephone and certified mail. The supervisor further noted that appellant was placed in an off-duty status as a result of an investigation by the employing establishment with regard to mail being stolen from appellant's postal truck. The

supervisor indicated that prior to the above incident appellant was able to perform his duties in accordance with expectations; however, he did have an attendance problem. Also submitted was an investigative memorandum prepared by the U.S. Postal Inspection Service, which indicated that three remittance pouches were stolen from appellant's postal truck on February 12, 1998. The pouches contained three registered pieces of mail worth \$11,500.00, official registered bank deposits for \$4,710.00 in cash, \$692.45 in checks, \$2,530.00 in cash; and \$836.16 in checks. The investigation indicated that an unidentified person appellant saw on the date of the theft would have had less than one minute to open the locked truck, look through the mail truck and identify three remittance pouches located in the front interior of the truck to steal them.

Thereafter, in an October 28, 1998 contravention letter, the employing establishment indicated that appellant was currently under investigation as a result of the theft of three postal pouches from his postal vehicle on February 12, 1998. The employing establishment noted that appellant worked intermittently following the above incident.

In a letter dated January 25, 1999, appellant through his representative submitted a letter with exhibits. Appellant indicated that he failed to respond to the employing establishment's telephone calls and correspondence because, on the advice of his doctor, he removed his family from the stressful environment as a means of therapy. He further noted that, contrary to his supervisors allegation that he had an attendance problem, he missed only three days since January 1998, not ten days as alleged. Appellant noted that the employing establishment was aware of the faulty locks on the postal vehicles and did not consider this as an explanation for the stolen mailbags.

Appellant's statement raised the following allegations: (1) appellant was harassed by his supervisor regarding an incident where three mailbags were stolen from his postal vehicle on February 12, 1998 causing him embarrassment, humiliation, anxiety and depression; (2) he was wrongfully investigated by the employing establishment for the theft of three mailbags from his postal truck; and (3) appellant was wrongfully placed on administrative leave from June 8 to July 26, 1998 after the U.S. Postal Inspection investigation occurred causing high levels of anxiety and stress.

By decision dated March 11, 1999, the Office denied appellant's claim for compensation on the basis that he failed to establish that the claimed injury occurred in the performance of duty.

In a letter dated April 9, 1999, appellant requested a review of the written record. No additional evidence was submitted by him.

In a decision dated August 13, 1999, the hearing representative affirmed the decision of the Office dated March 11, 1999.

By letter dated February 7, 2000, appellant requested reconsideration of the decision dated August 13, 1999. He contended that the employing establishment acted unreasonably by placing him on emergency off-duty placement status after the investigation into the theft of the mail pouches was completed. Appellant noted that he continued to work his regular duties while

the investigation was proceeding and it was only after the investigation was completed and the investigative memorandum was issued, that he was placed on off duty.

In a letter dated March 15, 2000, the Office requested the employing establishment address appellant's contention that he was placed on emergency off-duty placement status three months after the investigation was completed.

In a letter dated April 3, 2000, the employing establishment responded to the Office's inquiry and noted that appellant was not placed on emergency off-duty status three months after the investigation was completed. The employing establishment noted that, although the investigative memorandum from the U.S. Postal Inspection was dated May 6, 1998 and received by the employing establishment on May 8, 1998, the investigation was not completed at that point. The employing establishment management conducted its own investigation upon review of the investigative memorandum and determined that it was appropriate to place appellant on off-duty status with compensation from June 9 to July 4, 1998. Management sent appellant notification that he was to return to duty by July 27, 1998; however, appellant did not respond to letters or return telephone calls. Also attached was a memorandum from appellant's supervisor indicating that he was not aware that appellant was placed on emergency off-duty status.

In a decision dated April 18, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the application is insufficient to warrant modification of the prior decision.

In a letter dated September 15, 2000, appellant requested reconsideration of the decision dated April 18, 2000. He contended that the employing establishment acted unreasonably by placing him on emergency off-placement status after the investigation into the theft of the mail pouches was completed. Appellant noted that he continued to work his regular duties while the investigation was proceeding and it was only after the investigation was completed and the investigative memorandum was issued that appellant was placed on off-duty status. He referred to exhibit G, which he submitted with an earlier reconsideration request. The exhibit is a statement authored by appellant, which indicated that he met with his manager and inquired as to why he was placed on emergency off-duty status four months after the incident. Appellant noted that the manager indicated that the decision to place him on off-duty status was a mistake.

In a decision dated December 14, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the application is insufficient to warrant modification of the prior decision.

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

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated December 14 and April 18, 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 her 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

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.*

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

under the Act.⁸ In the present case, the employing establishment admitted that appellant was investigated regarding the theft of three remittance mailbags from his postal truck and was placed on emergency off-duty status after the investigative memorandum was issued and an independent investigation ensued. The employing establishment also noted that appellant was advised to return to duty by July 27, 1998 but did not return until September 7, 1998. However, general allegations of harassment are not sufficient⁹ and appellant has not detailed specific instances of harassment. He has not submitted sufficient evidence to establish that he was harassed by his supervisor.¹⁰ Appellant alleged that his supervisor engaged in actions which he believed constituted harassment, but he provided no corroborating evidence other than his own assertions, 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.

Appellant's other 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 the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

Appellant alleged that he was wrongfully investigated by the employing establishment for the theft of three mailbags from his postal truck. He also alleged that he was wrongfully placed on administrative leave from June 8 to July 26, 1998 after the U.S. Postal Inspection investigation was completed which caused high levels of anxiety and stress. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially assigned employment duties are not considered to be employment factors.¹³ 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁴ Although appellant has made allegations that the employing

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

⁹ *See 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.

¹³ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

¹⁴ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. He alleged that his supervisor wrongfully placed him on administrative leave from June 8 to July 26, 1998 after the U.S. Postal Inspection investigation was completed, but he provided no corroborating evidence, such as witness statements, to establish that such action was unreasonable.¹⁵ Appellant only submitted his account of a meeting with his manager where his manager allegedly admitted that placing appellant on emergency off-duty status was a mistake and that no further independent investigation ensued, however; the supervisor's statement contradicts this assertion noting that an independent investigation was performed and appellant was then placed on emergency off-duty status. The Board has held that handling of leave and attendance matters are generally related to employment; however, they are administrative functions of the employer and not duties of the employee.¹⁶ Additionally, the Board recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.¹⁷ Thus, appellant has not established a compensable employment factor under the Act in this respect.¹⁸ Appellant did not submit evidence supporting his claims that the employing establishment committed error or abuse in investigating him with regard to the stolen mailbags or placing appellant on administrative leave such that he did not establish a compensable employment factor. 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.

¹⁵ See *Larry J. Thomas*, 44 ECAB 291, 300 (1992).

¹⁶ *Judy L. Kahn*, 53 ECAB ____ (Docket No. 00-457, issued February 1, 2002).

¹⁷ *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001).

¹⁸ See *John Polito*, 50 ECAB 347 (1999).

The decisions of the Office of Workers' Compensation Programs dated December 14 and April 18, 2000 are affirmed.

Dated, Washington, DC
May 8, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member