U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PERRY M. NEWTON and U.S. POSTAL SERVICE,
POST OFFICE, Amory, MS

Docket No. 01-1448; Submitted on the Record;
Issued September 16, 2002

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty on or about April 21, 1999.

On May 10, 1999 appellant, a 51-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from work-related stress and severe depression. He identified April 21, 1999 as the date he first became aware of his employment-related condition. Appellant stated that since May 18, 1998, he had been engaged in a constant battle with management regarding his contractual rights, which caused stress. He characterized the employing establishment's actions as abusive.[1]

The Office denied appellant's claim by decision dated November 22, 1999. The Office found that he failed to substantiate his claim of a hostile work environment. Additionally, the Office found that the employment factors alleged to have caused or contributed to appellant's claimed emotional condition were administrative in nature and therefore, noncompensable. Accordingly, the Office concluded that appellant failed to establish that he sustained an injury in the performance of duty.

On December 13, 1999 appellant requested an oral hearing. He and his representative attended a June 21, 2000 prehearing conference, at which appellant requested that the hearing representative obtain the record from his previously accepted claim (A06-0701295) and consider that information in conjunction with the instant claim.

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[1] Appellant also filed a May 10, 1999 notice of traumatic injury (Form CA-1) for an emotional condition arising on April 21, 1999. He attributed his injury to "continual stress from work conditions culminating in false charges of sexual harassment from [a] fellow employee." Additionally, appellant filed a May 10, 1999 notice of recurrence of disability (Form CA-2a), alleging that he sustained a recurrence of disability on April 21, 1999, causally related to his March 6, 1998 employment injury, which the Office of Workers' Compensation Programs accepted for adjustment disorder with anxiety (A06-071295).

The hearing representative subsequently conducted a review of the written record, including the evidence associated with appellant's prior claim. By decision dated February 8, 2001, the hearing representative affirmed the Office's November 22, 1999 decision.

Appellant contends that the hearing representative improperly denied him the opportunity for an oral hearing. Counsel for appellant acknowledged in his correspondence to the Board that the oral hearing scheduled for June 21, 200 did not proceed as originally planned because of appellant's request to combine the instant claim with his previously accepted claim. Counsel further represented that it was appellant's "opinion" that the other case file would be retrieved, the claims combined and a new date set for an oral hearing. The hearing representative, however, did not reschedule the hearing, but instead conducted a review of the written record, including appellant's previously accepted claim.

Appellant contends that by conducting a review of the written record, the hearing representative denied him the opportunity to present new medical evidence and testimony. The hearing representative's February 8, 2001 decision states that "[o]n the day of the hearing, … [appellant] requested a review of the written record to allow for review of his previous claim."[2] Although appellant may have thought the hearing representative would schedule another oral hearing, there is no indication from the record that either appellant or his representative requested that the oral hearing be rescheduled for a later date.[3] Approximately seven months lapsed between the June 21, 2000 prehearing conference and the issuance of the hearing representative's decision. During this timeframe there appears to have been no written or verbal communication between appellant, his counsel and the Branch of Hearings and Review concerning the purported rescheduled hearing date. Furthermore, there is no indication that appellant attempted to submit additional medical evidence.

The hearing representative treated appellant's June 21, 2000 motion to combine his two claims as a request for review of the written record in lieu of an oral hearing. The change in format did not preclude appellant from submitting additional evidence.[4] Appellant has not presented any evidence demonstrating that the hearing representative erroneously interpreted his June 21, 2000 motion.

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty on or about April 21, 1999.

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[2] This statement is consistent with the hearing representative's July 9, 2000 memorandum to the file, which indicated as follows:

> "On the day of the scheduled hearing in this case, the claimant elected to discuss his case during a prehearing conference. During that discussion, [appellant] indicated that he had another stress-related claim that had been accepted by the Office and he wished to have the evidence in that case file reviewed in conjunction with this case file."

[3] Counsel's April 30, 2001 correspondence to the Office does not state that either he or appellant specifically requested a rescheduled oral hearing. He merely noted "It was the ***opinion*** of the claimant at the time that the case file of 06-701295 would be retrieved, the claims combined and a new date set for an oral hearing." (Emphasis added). Counsel apparently did not reduce his June 21, 2000 motion to writing.

[4] The decision to grant or deny a change of format is not reviewable. 20 C.F.R. § 10.616(b) (1999).

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.[5] Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.[6]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[7] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[8]

Appellant reported numerous employment incidents that allegedly occurred during the period May 1998 through April 1999, which he believed, caused or contributed to his claimed emotional condition. The vast majority of the alleged incidents involved the employing establishment's responses to appellant's requests for auxiliary assistance and/or overtime to complete his assigned duties. Additionally, appellant identified several incidents where the employing establishment conducted unannounced route inspections or mail counts. He also took exception to the employing establishment's handling of his May 7, 1999 request for two weeks of sick leave.

The above-noted employment incidents pertain to administrative and personnel actions taken by the employing establishment and absent error or abuse, falls outside the scope of compensability. Specifically, the assignment of work and the monitoring of work activities are administrative functions of the employer and not duties of the employee.[9] Similarly, the handling of leave requests is an administrative function of the employer.[10] However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be

[5] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

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

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

[8] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[9] *Sandra Davis*, 50 ECAB 450 (1999).

[10] *John Polito*, 50 ECAB 347 (1999).

considered a compensable employment factor.[11] In this instance, the evidence fails to establish that the employing establishment either erred or acted abusively with respect to the several incidents involving appellant's requests for overtime and/or auxiliary assistance to complete his assigned tasks. Similarly, the record does not establish error or abuse on the part of the employing establishment regarding the reported incidents of unannounced inspections and mail counts and the handling of appellant's May 7, 1999 request for sick leave.

Other employment incidents alleged to have caused or contributed to appellant's claimed emotional condition include an April 1, 1999 arbitration hearing and the receipt of a March 25, 1999 notice of suspension. The April 1, 1999 arbitration hearing stemmed from his challenge to a 14-day suspension for insubordinate behavior on August 8, 1998. In a decision dated April 6, 1999, the arbitrator upheld the employing establishment's disciplinary action. Appellant alleged that a coworker and two employing establishment managers falsely testified at the April 1, 1999 hearing. His participation in the April 1, 1999 arbitration hearing does not fall within the scope of his regular or specially assigned work duties. Consequently, appellant's claimed emotional reaction to the testimony offered at the hearing is not compensable.[12]

Appellant served another 14-day suspension in April 1999 for mishandling mail. The employing establishment's decision to suspend him is an administrative matter and the record does not establish that the employing establishment either erred or acted abusively in discharging its duties in this regard. Accordingly, appellant's claimed emotional reaction to the March 25, 1999 notice of suspension is not compensable.[13]

Appellant failed to substantiate his vague and general allegations of harassment and isolation by coworkers. For harassment to give rise to a compensable disability, there must be evidence that harassment occurred. Mere perceptions or feelings of harassment will not suffice.[14] The record also fails to support appellant's allegation that he was under constant surveillance and subjected to unfounded accusations by management regarding poor job performance. Lastly, appellant failed to substantiate his allegation that he was falsely accused of sexual harassment.

As appellant failed to identify any compensable employment factors, the Office properly declined to address the medical evidence of record.[15]

[11] *See Lillian Cutler, supra* note 7.

[12] *Id.*

[13] *Id.*

[14] *Bonnie Goodman*, 50 ECAB 139 (1998).

[15] *Bernard Snowden*, 49 ECAB 144, 148 (1997).

The February 8, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 16, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member