U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE T. McCONNELL and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Warrendale, PA

Docket No. 03-1836; Submitted on the Record;
Issued November 13, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition while in the performance of his federal employment.

On March 27, 2000 appellant, then a 42-year-old machine clerk,[1] filed an occupational disease claim alleging that he suffered a mental relapse on January 22, 2000 which he attributed to an employee and supervisors at work. He alleged that individuals at the employing establishment made him out to be a racist, discriminated against him and humiliated him.

An investigation of the events revealed that a supervisor spoke with appellant about his keying on January 22, 2000. Appellant explained that he was unable to key because the keyer in front of him, Archie L. Hogan, did not clear the sensor. Also, Mr. Hogan was on a cellular telephone and appellant felt it was not his job to interrupt Mr. Hogan's private conversations. The supervisor then spoke to Mr. Hogan, instructing him not to use his cellular telephone on the workroom floor and to be more aware of blocked sensors. When asked the reason for these instructions, the supervisor advised of her conversation with appellant. Mr. Hogan and appellant subsequently exchanged words and Mr. Hogan reported that he felt threatened. After further investigation, including an interview with an eyewitness to the encounter; Curtis Best, manager of distribution operations of tour 3, informed appellant that he was being placed on emergency placement in an off-duty status for violations of the Allegheny Area policy of zero tolerance towards workplace violence.[2] Mr. Best instructed appellant to report back to work on January 24, 2000. Appellant retrieved his belongings, spoke with a union representative and left the building. He took sick leave beginning January 31, 2000.

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[1] The immediate supervisor reported that appellant was a distribution clerk who held a bid as a parcel keyer.

[2] A January 25, 2000 memorandum notified appellant that he was being placed in an off-duty (without pay) status for the following reason: "It was revealed that you engaged in a verbal confrontation with another postal employee. During this verbal confrontation you threatened him by saying, 'He better not see anyone like me walking down his street.' Based on the above, your retention on duty could result in the injury of yourself or others."

Appellant also alleged that his loud work environment was a major factor in contributing to the claimed conditions: loud and sometimes painful tinnitus, depression, anxiety, sleeplessness, headaches, irritability, loss of concentration and paranoia. He advised that there were no stressful conditions in his life before the January 22, 2000 incident: "I was a very happy and out-going person and enjoyed life and myself."

In a decision dated August 9, 2000, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the evidence failed to establish that the claimed injury occurred in the performance of duty. The actions taken by the employing establishment were found to be personnel matters and the Office found no evidence to suggest that the employing establishment erred or acted abusively in the administration of the personnel matters. Regarding appellant's tinnitus, the Office noted that no medical evidence explained how the incident of January 22, 2000, caused this condition. The medical evidence indicated that appellant had experienced this condition for 25 years and that it became worse in January 2000, after he took Prozac. The Office advised appellant to file a separate claim if he felt that he developed hearing loss as a result of exposure to loud noise at work.

Appellant requested an oral hearing before an Office hearing representative. At the hearing, which was held on February 27, 2001 appellant testified and submitted evidence.

In a decision dated May 4, 2001, the hearing representative affirmed the denial of appellant's claim for compensation. The hearing representative found there was insufficient evidence to support that he was treated unfairly, was wrongly subjected to an investigation, was discriminated against or was the subject of harassment. The factors identified by appellant as having caused or contributed to his emotional condition were not compensable factors of employment or were not established as factual.

Appellant requested reconsideration. In a decision dated November 16, 2001, the Office reviewed the merits of his claim and denied modification of the May 4, 2001 decision.

On November 16, 2002 appellant inquired as to the status of his request for reconsideration. Appellant stated that he had not heard from the Office since August 29, 2001. In support of his claim he attached a copy of a grievance he filed over his emergency suspension. He alleged a violation of Articles 2, 16 and 19 of the National Postal Agreement:

> "A. The grievant is a full time regular [s]ection 2 clerk on [t]our 3 at the Pittsburgh BMC. B. On January 21, 2000 management placed grievant in an emergency suspension, which continued through January 26, 2000, causing a loss of 25.42 hours of work and compensation thereof. C. Discipline is punitive in nature and lacks just cause. D. Management has failed to consider [the supervisor's] unprofessional actions and instigation of the situation, the disparity of treatment with the other employee involved, the unwarranted and unilaterally imposed condition to meet with postal inspectors prior to return, the unreasonable 'investigation' delay and the fact that no written charges have been issued to which a proper defense could be responded and/or that wha … [end of text]."

Appellant sought the following corrective action:

> "A. Management cease and desist violating the due process and just cause provisions as outlined in the Agreements. B. Management compensate grievant all lost wages and benefits including but not limited to lost night differential, Sunday premiums, overtime and holiday pay which he incurs throughout the period of emergency placement."

On May 25, 2001 appellant's union representative and the employing establishment representative entered into a settlement agreement, as follows:

> "In full and final resolution of the above referenced grievance(s), the following is agreed to by the undersigned parties--
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> "The grievance is sustained. The grievant will be compensated 25.42 hours at the straight-time rate. This is to include night-shift differential.
>
> "It is mutually agreed that this settlement agreement is not to be cited as precedent by either party in any future grievance or arbitration case. It is further agreed that the captioned case is hereby removed from the pending arbitration list."

The Office accepted appellant's November 16, 2002 correspondence as a timely request for reconsideration. The employing establishment submitted a copy of the grievance and the May 25, 2001 settlement agreement. Included was a control sheet completed by an employing establishment representative, who noted the decision was to sustain appellant's grievance: "Postal management advised to sustain grievance in that there now exists peace between the employees involved and that they wanted to avoid any explosive reoccurrences."

In a decision dated May 7, 2003, the Office reviewed the merits of appellant's claim and denied modification of the November 16, 2001 decision. The Office found there was no indication or finding in the settlement that the administrative action was erroneous or abusive or that "the settlement was made with or without prejudice to either party."

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition while in the performance of his duty.

Congress, in providing a compensation program for federal employees, did not contemplate a program of insurance against every injury, illness, or mishap that may be contemporaneous or coincidental with employment. Liability, does not attach upon the mere existence of an employer-employee relationship.[3] Instead, congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty.[4] The phrase "sustained while in the performance of his duty" is regarded as the equivalent of the coverage formula commonly found in workers'

[3] *Christine Lawrence*, 36 ECAB 422 (1985); *Minnie M. Huebner*, 2 ECAB 20 (1948).

[4] 5 U.S.C. § 8102(a).

compensation laws, namely, "arising out of and in the course of performance."[5] "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his master's business, at a place where he may reasonably be expected to be in connection with his employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[6]

As the Board observed in the case of *Lillian Cutler*,[7] however, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,[8] neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;[9] investigations;[10] determinations concerning promotions and the work environment;[11] discussions about an SF-171;[12] reassignment and subsequent denial of requests for transfer;[13] discussion

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[5] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[6] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

[7] 28 ECAB 125 (1976).

[8] *Joseph F. McHale*, 45 ECAB 669 (1994).

[9] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[10] *Sandra F. Powell*, 45 ECAB 877 (1994).

[11] *Merriett J. Kauffman*, 45 ECAB 696 (1994).

[12] *Lorna R. Strong*, 45 ECAB 470 (1994).

[13] *James W. Griffin*, 45 ECAB 774 (1994).

about the employee's relationship with other supervisors;[14] or the monitoring of work by a supervisor.[15]

However, the Board has held that error or abuse by employing establishment personnel in an administrative or personnel matter, or evidence that the employing establishment personnel acted unreasonably in an administrative or personnel matter, may afford coverage.[16] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[17] To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.[18] Based on the evidence submitted by the claimant and the employing establishment, the Office is required to make findings of fact, which the Board can review. The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[19]

In this case, the Office denied appellant's claim for an emotional condition because the evidence failed to establish error or abuse in the administrative action to suspend appellant for violence in the workplace. The Office found that a settlement of appellant's grievance was insufficient to establish that his suspension was a compensable factor of employment.

Settlement agreements are generally insufficient to establish error or abuse on the part of the employing establishment. The parties to these agreements typically admit no fault and they usually agree to resolve the dispute without prejudice to the position of either side.[20] For this reason, the mere fact that a settlement agreement lessens a disciplinary action taken towards an employee does not establish that the employing establishment acted in an erroneous or abusive manner with respect to the initial action.[21] The Board will look to the terms and, if necessary, to

[14] *Raul Campbell*, 45 ECAB 869 (1994).

[15] *Daryl R. Davis*, 45 ECAB 907 (1994).

[16] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[17] *See Arthur F. Hougens*, 42 ECAB 455 (1991) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

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

[19] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[20] A compromise or settlement agreement is an agreement to terminate, by means of mutual concessions, a claim which is disputed in good faith or unliquidated. It is an amicable method of settling or resolving bona fide differences or uncertainties and is designed to prevent or put an end to litigation. 15A AM. JUR. 2D *Compromise and Settlement* § 1 (2000).

[21] *Garry M. Carlo*, 47 ECAB 299 (1996) (settlement agreement in which the employing establishment restored the claimant to his former grade and position as postmaster in return for his retirement made no finding of error or abuse and failed to demonstrate such); *Anne L. Livermore*, 46 ECAB 425 (1995) (claimant indicated that a settlement was reached that allowed her to continue working for the employing establishment, but she did not claim or otherwise show that the settlement constituted an admission by the employing establishment that it committed error or abuse by placing her on a work detail or by issuing her a proposed notice of removal).

the circumstances of the settlement to determine whether the evidence establishes error or abuse in an administrative or personnel matter.[22]

The May 25, 2001 agreement signed by appellant's union representative and the employing establishment representative expressly affirmed the validity of appellant's grievance, noting: "The grievance is sustained." The Board finds this language to be unambiguous and, an explicit admission of fact by the employing establishment. Under the terms of the settlement agreement, the employing establishment acknowledge error in its emergency suspension of appellant for violence in the workplace. The Board finds that appellant has established a compensable factor of employment.

The Board has held that allegations of an emotional reaction to incidents such as verbal altercations with coworkers may constitute compensable factors of employment.[23] However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act. When sufficiently detailed and supported by the record, verbal altercations may constitute a compensable employment factor.[24] The evidence of record pertaining to the January 22, 2000 incident is vague and lacks sufficient details as to who said what, that the Board finds the argument does not warrant a finding of verbal abuse.

Appellant's burden of proof, however, is not discharged by the fact that he has established a compensable factor of employment that may give rise to a compensable disability. As noted earlier, he must also establish an injury "arising out of the employment," an injury that has a causal connection to the employment, either by precipitation, aggravation or acceleration.[25]

Causal relationship is a medical issue,[26] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[27] must be one of reasonable medical certainty,[28]

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[22] *See William T. Abernathy*, 48 ECAB 687 (1997) (notwithstanding the Office's finding that a settlement did not evidence any wrongdoing on the part of the employing establishment, the Board found error where it appeared that the employing establishment attempted to discipline the claimant based on rules that were previously rescinded).

[23] *Marie Boylan*, 45 ECAB 338 (1994); *see Gregory J. Meisenburg*, 44 ECAB 527, 529 (1993); *David W. Shirey*, 42 ECAB 783, 795 (1991).

[24] *See Carolyn S. Philpott*, 51 ECAB 175 (1999).

[25] *See Norma L. Blank*, 43 ECAB 384 (1992) (when the matter alleged is a compensable factor of employment and the evidence of record establishes the truth of the matter alleged, the Office must base its decision on an analysis of the medical evidence).

[26] *Mary J. Briggs*, 37 ECAB 578 (1986).

[27] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[28] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[29]

The medical evidence submitted in this case contains no such opinion. In a July 11, 2000 report, Dr. Stuart S. Berstein, a Board-certified psychiatrist and fitness-for-duty physician, related the history given by appellant and offered the following principal diagnosis: "[Appellant] experienced anger and anxiety in association with an [a]djustment [d]isorder that occurred with the events at work on January 21, 2000 and thereafter." Dr. Berstein's report is of little probative value because it offers no psychiatric explanation of how the emergency suspension caused appellant's diagnosed condition.[30] None of the treatment notes or other medical reports submitted in this case supplies the psychiatric reasoning necessary to establish causal relationship.

Because the medical evidence fails to establish causal relationship, appellant has not met his burden of proof to establish an injury arising out of his employment. The Board will affirm the denial of his claim for compensation.

The May 7, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 13, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[29] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[30] The Board has held that medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954). Appellant also submitted no reasoned medical opinion explaining how the confrontation or emergency suspension aggravated his tinnitus.