

**United States Department of Labor
Employees' Compensation Appeals Board**

ANDREW WOLFGANG-MASTERS, Appellant)	
)	
and)	Docket No. 05-1
)	Issued: March 22, 2005
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer)	
)	

Appearances:
Andrew Wolfgang-Masters, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 28, 2004 appellant filed a timely appeal of an August 13, 2004 decision of the Office of Workers' Compensation Programs, rescinding acceptance of his claim for an emotional condition and terminating compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to rescind acceptance of an aggravation of a preexisting emotional condition.

FACTUAL HISTORY

On February 18, 1971 appellant, then a 27-year-old letter sorter, filed a claim for an emotional condition causally related to his federal employment. Appellant stated on the claim form that his condition had worsened "due to job difficulties." According to the employing establishment, appellant's employment was terminated as of February 5, 1971. The Office denied the claim for compensation by decision dated December 13, 1971.

Appellant requested a hearing before an Office hearing representative, which was held on October 17, 1972. He stated that he received frequent reprimands from his supervisors and he felt that his supervisors were picking on him. Appellant reported that he experienced hostility from coworkers and a number of clerks made reports concerning him. The record contains a number of statements from supervisors and coworkers. A letter dated January 9, 1970 from a supervisor reported that appellant was behaving irrationally and was increasingly becoming a supervisory problem; he was insolent, his work product was below standard and he had not responded to counseling. Another supervisor reported in a January 9, 1970 letter that appellant made no effort to stay in his assignment or to return in a timely fashion from break and lunch periods, that he had been counseled repeatedly on these infractions and issued letters of warning, but his flagrant disregard for rules was demoralizing to coworkers. A September 12, 1970 letter from a coworker reported that she was afraid of appellant as he followed her throughout the employing establishment. A supervisor stated in a September 17, 1970 letter that the employee had filed a complaint against appellant and it was one of many reports on file concerning his behavior. The supervisor also stated that the employing establishment had been working closely with an employing establishment physician to correct appellant's irrational behavior, without success.

In a report dated October 10, 1972, Dr. Roy L. Curry, a psychiatrist, provided a history and results on examination. Dr. Curry diagnosed schizophrenic reaction, paranoid type, chronic. He stated that appellant found it difficult to tolerate "the stress of crowded conditions" and to tolerate authority. Dr. Curry stated that appellant's illness "would appear have been aggravated by working conditions in his last employment, [the employing establishment]. According to the patient, he frequently worked night shifts which undoubtedly would affect his sleep pattern." He also noted that appellant felt threatened by authority and working closely with a group of people in crowded conditions would activate homosexual feelings that produce anxiety and suspiciousness. Dr. Curry concluded that appellant was disabled for work.

In a decision dated March 21, 1973, an Office hearing representative set aside the December 13, 1971 Office decision. The hearing representative found that "the conditions of employment did aggravate the claimant's preexisting emotional condition" and the Office was directed to pay appropriate compensation. Appellant received compensation for temporary total disability.

In a letter dated June 25, 2004, the Office advised appellant that it proposed to rescind acceptance of his claim and terminate compensation. The Office explained that the evidence of record did not establish any compensable work factors as contributing to an emotional condition. The Office found no evidence of administrative error or abuse, or other compensable work factors. Appellant was advised that, if he disagreed with the proposed action, he should submit evidence or argument within 30 days. Appellant did not respond.

By decision dated August 13, 2004, the Office rescinded acceptance of the claim and terminated entitlement to compensation benefits.

LEGAL PRECEDENT

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.¹ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.² It is well established that, once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation.³ In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.⁴

ANALYSIS

The Office noted in its June 25, 2004 memorandum that, in accepting the claim, the Office hearing representative had generally referred to "conditions of employment" without making specific findings of fact with respect to alleged factors of employment. The Board has held that a claim for an emotional condition must be based on compensable work factors that are substantiated by the probative evidence of record. An emotional reaction to regular or specially assigned work duties comes within coverage of the Federal Employees' Compensation Act, but not every situation that has some connection to employment is considered a compensable work factor.⁵ An allegation regarding an administrative or personnel matter, rather than regular or specially assigned duties, will not be considered compensable work factors unless there is evidence of error or abuse by the employing establishment.⁶

At the October 17, 1972 hearing, appellant alleged two sources of stress at work: (1) that he was picked on by supervisors and subject to frequent reprimands; and (2) there was hostility and tense relationships with coworkers, who filed reports against him. With respect to the initial allegation, the evidence must demonstrate that there was error or abuse by the employing establishment before the allegation can be established as a compensable work factor.⁷ The record does indicate that appellant was subject to letters of warning and counseling for his behavior, but there is no evidence of error or abuse. The statements from his supervisors clearly explain that the basis for disciplinary actions was appellant's behavior, which antagonized his coworkers and supervisors. The evidence indicated that the employing establishment attempted

¹ *Eli Jacobs*, 32 ECAB 1147 (1981).

² *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

³ See 20 C.F.R. § 10.610.

⁴ *Belinda R. Darville*, 54 ECAB ____ (Docket No. 02-1183, issued June 26, 2003).

⁵ See *Bobbie D. Daly*, 53 ECAB 691 (2002).

⁶ See *Roger Williams*, 52 ECAB 468 (2001).

⁷ Reprimands, counseling sessions and other disciplinary actions are administrative matters that are not covered under the Act unless there is evidence of error or abuse. *Janet I. Jones*, 47 ECAB 345 (1996).

to correct appellant's actions with counseling and appointments with an employing establishment physician. There is no evidence of error or abuse by the employing establishment and the Board finds that no compensable factor was established in this regard.

With respect to the second allegation, there is no evidence establishing that the actions of any coworkers constituted harassment or were otherwise unreasonable in this case.⁸ Appellant did not provide a detailed discussion of the alleged hostile actions and, while there may have been complaints against appellant filed by some coworkers, the evidence indicates that such complaints were filed in response to his inappropriate behavior. There is no probative evidence establishing a compensable work factor based on the actions of his coworkers.

The October 10, 1972 report from Dr. Curry referred generally to appellant's working nights and stated this would undoubtedly affect his sleep patterns. But appellant did not allege that working at nights contributed to his condition or provide any detail regarding his work shift. Dr. Curry also referred to working in crowded conditions, but again appellant did not discuss crowded conditions or provide any evidence to substantiate a compensable work factor in this regard.

The Board finds that in rescinding acceptance of the claim the Office provided reasons for the rescission and properly explained that no compensable work factors were established. If the evidence does not establish a compensable work factor, a claim for an emotional condition has not been established and the Office may rescind acceptance of the claim.⁹ The evidence of record does not substantiate a compensable work factor in this case and therefore the Office may rescind acceptance of the claim.

CONCLUSION

The Board finds that the Office met its burden of proof to rescind acceptance of aggravation of a preexisting emotion condition because the evidence did not substantiate a compensable work factor.

⁸ A claim may be based on the actions or comments of coworkers, but the factual evidence must include specific allegations and evidence to support that the alleged harassment occurred. See *Gregory J. Meisenburg*, 44 ECAB 527, 529 (1993).

⁹ See *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 13, 2004 is affirmed.

Issued: March 22, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member