

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

D.T., Appellant

and

**U.S. POSTAL SERVICE, WESTBURY PLACE
STATION, Houston, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1255
Issued: October 4, 2007**

Appearances:
Stephen V. Hunt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 2, 2007 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated October 18, 2006 and March 14, 2007, which denied his claim. 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 appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On June 30, 2006 appellant, then a 39-year-old city letter carrier, filed a Form CA-2, occupational disease claim, alleging that he sustained an emotional condition as a reaction to an employment injury. He stopped work on December 27, 2004. By letters dated July 26, 2006, the

Office informed appellant of the evidence needed to support his claim and asked that the employing establishment respond.

In an August 7, 2006 statement, appellant alleged that, because of an accepted back injury,¹ he was unable to move about, play with his young children or participate in social functions. Due to his physical limitations, he was placed in conflict with employing establishment managers over what duties he could perform. Appellant was continuously rushed to accomplish tasks and duties by management which was frustrating. He stopped work in December 2004 and his emotional symptoms had worsened since that time, such that he was crying, unable to sleep, had constant stomach pains, was sweating and jittery, could not concentrate and suffered from a loss of memory. Appellant concluded that his emotional condition was caused by two sources: the frustrating conditions that he was exposed to in employment since the September 8, 2004 employment injury and as a direct result of that injury. He also submitted a June 18, 2005 statement, signed by three coworkers, describing his job duties from September to December 2004.

In a July 15, 2006 report, Glenn J. Bricken, Psy.D., a clinical psychologist, noted the history of injury and appellant's complaints. He performed psychological testing and diagnosed low back syndrome, chronic pain disorder associated with both psychological factors and a general medical condition, reactive anxiety, reactive depression, chronic pain disorder associated with a lumbar injury, and problems related to pain and occupational, recreational and social decline in functioning. Dr. Bricken advised that these conditions were caused by the September 8, 2004 employment injury and that appellant was totally disabled due to the severity of his chronic pain. He recommended psychotherapy, biofeedback and a chronic pain program.

By decision dated October 18, 2006, the Office denied the claim, finding that appellant failed to establish a compensable factor of employment.

On November 13, 2006 appellant requested a review of the written record. In a March 14, 2007 decision, an Office hearing representative affirmed the October 18, 2006 decision, finding that appellant failed to establish that he was the subject of harassment or was forced to work outside his medical restrictions. The hearing representative found, however, that appellant had submitted *prima facie* evidence supporting that his back injury caused his anxiety and depression and advised appellant to pursue his emotional condition claim under the case file for his accepted back condition.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or

¹ Under Office file number 162082914, the Office accepted that on September 8, 2004 appellant sustained employment-related lumbar and lumbosacral sprain/strain and herniated lumbar discs. Appellant filed an appeal with the Board of Office decisions under that file number which was docketed by the Board as file number 07-1254. A separate decision will be issued regarding that claim. The instant case was adjudicated by the Office under file number 162113110.

incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.³ 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.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁶ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an 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 results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.¹⁰

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ 28 ECAB 125 (1976).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Lillian Cutler*, *supra* note 5.

⁹ *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *James E. Norris*, 52 ECAB 93 (2000).

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty. Appellant generally alleged that he was forced to overwork by employing establishment management. While overwork may be a compensable factor of employment it must be established on a factual basis to be a compensable employment factor.¹¹ Appellant submitted insufficient evidence in support of his allegation. He did not establish this as a compensable factor of employment. Appellant also asserted that he was assigned work duties outside his physical restrictions. Being required to work beyond physical limitations, if substantiated, can constitute a compensable factor of employment.¹² Appellant submitted a statement describing work duties that was also signed by three coworkers. There is, however, no medical evidence describing his physical restrictions at the time he stopped work. There is no factual support in the record to substantiate this allegation, and appellant did not establish a compensable factor of employment in this regard.

In evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or workers.¹³ Appellant submitted no evidence in support of his claim that he was harassed by employing establishment management regarding his job duties. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁴ Appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his employing establishment managers.¹⁵ Appellant has not established that he sustained an emotional condition in the performance of duty as alleged.¹⁶

Appellant, however, also alleged that his emotional condition was caused by his accepted back injury.¹⁷ In this regard, the Board notes that the Office advised appellant that his claimed emotional condition should be developed as a consequence of his accepted back condition.

CONCLUSION

The Board finds that the Office properly denied appellant's separate claim that he sustained an emotional condition. The Board however finds that, upon the return of the record, this case, Office file number 162113110, should be doubled with that of file number 162082914,

¹¹ *Sherry L. McFall*, 51 ECAB 436 (2000).

¹² *Ronald Martinez*, 49 ECAB 326 (1998).

¹³ *Ronald K. Jablanski*, 56 ECAB ___ (Docket No. 05-482, issued July 13, 2005).

¹⁴ *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁵ See *James E. Norris*, *supra* note 10.

¹⁶ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Katherine A. Berg*, 54 ECAB 262 (2002).

¹⁷ *Supra* note 1.

and the Office should further develop the case to determine if appellant's claimed emotional condition is a consequence of his accepted back condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 14, 2007 be affirmed.

Issued: October 4, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board