

On May 23, 2005 he first realized that his condition was caused by his federal employment. Appellant felt tension in his shoulder and pain in both feet. He could not attend physical therapy because workers' compensation did not approve his treatment. Appellant stated that he experienced added stress due to financial concerns as he had not received any payment for wage loss. He stopped work on October 7, 2005. An October 5, 2005 medical report of a physician, whose signature is illegible, stated that appellant sustained right shoulder bursitis and a partial rotator cuff and right Achilles tear.

In an October 7, 2005 letter, the employing establishment stated that appellant was on leave as of May 26, 2005 for shoulder and foot problems. Appellant's wife advised that he had suffered a stroke and would not be returning to work.

By letter dated November 8, 2005, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed additional factual and medical evidence he needed to submit within 30 days to establish his claim. Appellant did not respond within the allotted time period.

By decision dated November 21, 2005, the Office denied appellant's claim. Appellant failed to establish that his stroke was causally related to a compensable factor of his employment.

On July 26, 2006 appellant requested reconsideration. On December 30, 2005 Dr. David R. Patterson, a Board-certified physiatrist, stated that appellant sustained a right-sided hemorrhagic stroke and left hemiparesis, and neurocognitive deficits related to these conditions. He also suffered from carotid artery stenosis and hypertension. Dr. Patterson opined that appellant was totally disabled from May 25 through December 1, 2005.

In an August 7, 2006 decision, the Office denied modification of the November 21, 2005 decision. On September 2, 2006 appellant requested reconsideration. He contended that grievances he filed against the employing establishment during the period January 25, 1985 through September 4, 1987 caused work-related stress resulting in a stroke. Appellant further contended that he developed stress from trying to fight the clock, as well as, perform certain jobs by himself. He stated that his work was consistently inspected and his mail was counted. Appellant stated that the time period allotted for him to deliver the mail had been shortened compared to that of his coworkers which put strain on his body. He also had to perform work duties that should have been performed by two people, especially on May 25, 2005, when Mr. Russo was off work because he had lost his driving privileges due to a car accident. Appellant also had to case loads of mail and count mail several times over. He was forced to work harder during the period he was supposed to perform light-duty work.

In an undated letter, appellant disagreed with a seven-day suspension for failure to follow instructions and performance of unauthorized overtime work on December 7, 2001. He stated that a supervisor failed to conduct an investigative interview regarding this incident. Appellant related that his suspension was reduced to a letter of warning. He explained that, on December 7, 2001, he submitted a form requesting overtime which was denied by a supervisor. Appellant had to switch his vehicle and deliver the remaining mail. He called the employing establishment between 3:30 p.m. and 3:45 p.m. to request additional time to deliver the mail but the line was busy. Appellant stated that Thai Ngo, a coworker, witnessed the call. He called

Postmaster Anita Guzik with an explanation regarding the situation. Appellant contended that his supervisor singled him out and issued the letter of warning based on his race.

In narrative statements dated March 17 and February 27, 1998, Augustine Beanez and Steven R. Thorp, coworkers, related that they were required to take gasoline to vehicles that had run out of it. Mr. Beanez stated that this was a common occurrence for carriers and he even ran out of gas when he returned from carrying mail. Mr. Thorp stated that he had no knowledge of any carrier or other person who had been suspended for running out of gas.

In a March 13, 2002 letter, Mr. Ngo stated that, at approximately 3:30 p.m. and 3:45 p.m. on December 7, 2001, appellant telephoned the employing establishment to state that he would not be able to complete his route on time and to obtain further instructions, but the line was busy. In an undated letter, Ramon Gonzales, a customer, stated that on or about December 7, 2001 appellant telephoned the employing establishment to obtain authorization to work overtime, but the line was busy.

Appellant submitted several statements from his coworkers. On April 27 and May 7, 1990 Creighton Nobul and Sal Chiarenza respectively, stated that on December 7, 1989 they witnessed Postmaster Henry Diaz yell at appellant for working too much overtime and not following his order to go to his office. On February 14, 2006 Benny De La Cruz related that appellant was singled out and verbally harassed by management. On August 23, 2006 Anthony Russo stated that Mr. Santana, a supervisor, pressured and harassed appellant on numerous occasions. He related that, when appellant left his case, he was asked to case his mail. Mr. Russo noted that appellant had his long-life vehicle (LLV) taken away and was given a white jeep while the rest of the employees had an LLV. He also noted that, during the tenure of Postmaster Diaz, appellant's mail was counted more than anyone else's mail. On August 24, 2006 Mr. Russo related that in January 2005 Henry Tanayo, a supervisor, did not allow him to drive a vehicle which resulted in appellant delivering express mail by himself with a deadline. In a December 14, 2006 statement, a chief shop steward, whose name is illegible, related that appellant was harassed by management as he was checked on in the office and while on his route more than other employees.

Appellant submitted settlement agreements that reduced his 14-day suspension for failure to follow instructions on February 25, 1998 to a letter of warning. Among other things, he would be treated equally as his coworkers in same or similar circumstances and that proper procedures would be followed by management regarding sick leave request, established a special count and inspection of his work, and removed a January 16, 1987 discussion from his records and Richard Dale, as his supervisor. The settlements ordered all employees including, supervisors to follow safety regulations, reduced his November 17, 1997 seven-day suspension to a discussion for unsatisfactory work performance and compensated him for 1.25 hours of administrative leave on November 21, 1997.

An October 27, 1997 letter from a clinic stated that appellant underwent physical therapy on that date. In an October 13, 2006 medical report, Dr. Ferdinand A. Alfonso, a Board-certified psychiatrist, opined that appellant's intracranial hypertensive bleed was work related.

By decision dated February 2, 2008, the Office denied modification of the August 7, 2006 decision.

LEGAL PRECEDENT

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 stress-related reaction to his or her 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. 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

In cases involving stress-related 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.³ 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.⁴

ANALYSIS

Appellant alleged that the handling of his claim for wage-loss compensation, the filing of his grievances, his regular work duties as a letter carrier and harassment at the employing establishment exacerbated his hypertension and contributed to his stroke. He stated that he was concerned about his finances because he had not received any payment for wage loss. Appellant filed several grievances against the employing establishment including, one suspending him for failure to follow instructions and performance of unauthorized overtime work on December 7, 2001. He stated that, on December 7, 2001, a supervisor denied his written request to work overtime. Appellant had to switch his vehicle and deliver the remaining mail. He called the employing establishment between 3:30 p.m. and 3:45 p.m. to request additional time to deliver his mail but the line was busy. Appellant contended that a supervisor failed to conduct an investigative interview regarding this incident and that his suspension was later reduced to a letter of warning. His allegations regarding the handling of his claim for wage-loss

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Margaret S. Krzycki*, 43 ECAB 496, 501-02 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

compensation⁵ and filing of grievances⁶ relate to noncompensable administrative and personnel matters. However, error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.⁷ Appellant did not submit any evidence established error or abuse in handling his claim for wage-loss compensation. Although the employing establishment rescinded and modified his seven-day suspension for the December 7, 2001 incident to a letter of warning, the record does not contain a final decision finding that the employing establishment erred or acted abusively in handling this administrative matter. Mr. Beanez and Mr. Thorp stated that it was common for vehicles to run out of gas and that no carrier had been suspended for running out of gas. Mr. Ngo and Mr. Gonzales stated that appellant telephoned the employing establishment on December 7, 2001 to obtain authorization to work overtime because he was unable to complete his route. The statements of Mr. Beanez, Mr. Thorp, Mr. Ngo and Mr. Gonzales do not establish error or abuse on behalf of management in disciplining appellant. They did not provide any details about why appellant was suspended by the employing establishment. The record does not contain a final decision finding that the employing establishment erred or acted abusively in the other administrative matters for which appellant filed grievances. The Board finds that appellant has failed to establish a compensable employment factor.

Appellant contended that he was harassed by the employing establishment. He stated that he had to fight the clock in completing his work duties in a shorter time period than his coworkers which caused stress on his body. Appellant also stated that he had to perform certain jobs by himself that should have been performed by two people, especially on May 25, 2005, when Mr. Russo was off work because he had lost his driving privileges due to a car accident. He related that his work was consistently inspected and his mail was counted. Appellant had to case loads of mail and count mail several times over. He stated that he was forced to work harder during the period he was supposed to perform light-duty work. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable under the principles of *Cutler*.⁸ As with all allegations, overwork must be established on a factual basis to be compensable.⁹ Mr. De La Cruz, a coworker, generally stated that appellant was singled out and verbally harassed by management. However, he did not provide specifics as to the managers involved or what was said to appellant. Mr. Russo, a coworker, stated that Mr. Santana, a supervisor, pressured and harassed appellant on numerous occasions. He related that, when appellant left his case, he was asked to case his mail. Mr. Russo stated that appellant had an LLV taken away and was given a white jeep while the rest of the employees had an LLV. He also stated that appellant's mail was counted more than anyone else's mail during Postmaster Diaz's tenure. Mr. Russo indicated that, when Mr. Tanayo, a supervisor, would not allow him to drive a vehicle, appellant had to deliver

⁵ See *Ronald K. Jablanski*, 56 ECAB 616 (2005).

⁶ *Michael A. Salvato*, 53 ECB 666, 668 (2002).

⁷ *Margreat Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁸ *Peter D. Butt, Jr.*, 57 ECAB 117 (2004).

⁹ *Sherry L. McFall*, 51 ECAB 436 (2000).

express mail by himself within a certain time period. A chief union steward stated that appellant was harassed by management as it routinely checked on him in the office and on his route more than other employees. The monitoring¹⁰ and assignment of work activities¹¹ are administrative functions of the employer. The statements of Mr. Russo and the union steward do not establish that the managers erred or acted unreasonably in handling these administrative matters. The Board, therefore, finds that appellant has not established a compensable employment factor.

Appellant contended that Postmaster Diaz yelled at him. Mr. Nobul and Mr. Chiarenza, appellant's coworkers, stated that on December 7, 1989 they witnessed Postmaster Diaz yell at appellant for working too much overtime and not following his order to go to his office. Although Postmaster Diaz's yelling may have engendered offensive feelings, the statements of the coworkers are not sufficient to establish a compensable factor.¹² The evidence of record does not otherwise establish a pattern of verbal abuse or harassment by Postmaster Diaz towards appellant. Accordingly, appellant has not established a compensable factor of employment.¹³

CONCLUSION

The Board finds that appellant has not established that he sustained a stroke in the performance of duty.

¹⁰ *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹¹ *Barbara J. Latham*, 53 ECAB 316 (2002).

¹² *See Denis M. Dupor*, 51 ECAB 482, 486 (2000).

¹³ As appellant has not substantiated a compensable factor of employment as the cause of his stroke, the medical evidence he submitted need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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