United States Department of Labor
Employees' Compensation Appeals Board

L.R., Appellant	)	
and	)	**Docket No. 08-2241**
	)	**Issued: June 2, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Sonora, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 12, 2008 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated July 30, 2008 denying his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On March 3, 2008 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that he suffered an undisclosed disease or illness as a result of his federal employment. He alleged that senior management continued to use "DOIS" [Delivery Operations Information System] unfairly, utilized incomplete figures and approved help for another carrier with no explanation as to why she needed help but provided no assistance for him. Appellant

contended that mail was held back and had a very inaccurate count. He also contended that management threatened to not approve his change of schedule even though he had a doctor's note. Appellant also argued that management was not recognizing his doctor's note limiting him to working eight hours a day. The employing establishment controverted the claim.

In support of his claim, appellant submitted a doctor's form completed by Dr. Brewster on February 20, 2008, wherein he noted that appellant complained of an episode of eye twitching at work which he attributed to the fact that the employing establishment harassed, lied and threatened him, applied rules differently to him, used DOIS improperly and refused doctor's directions. Dr. Brewster diagnosed job stress and prescribed medication.

In a February 11, 2008 note, Dr. Kathy J. Bosch, a chiropractor, indicated that appellant was under her professional care from February 11 through 18, 2008 for cervical pain syndrome and was to only work eight hours a day during that time.

The employing establishment made appellant an offer of light duty as a city carrier (working eight hours a day) from March 3 through 15, 2008.

Appellant also submitted a work status slip signed by a physician's assistant indicating that appellant was off work from February 25 through 28, 2008 and was to work modified work (no more than eight hours a day) from February 29 through March 15, 2008. In a February 29, 2008 note, this physician's assistant indicated that appellant remained off from work with a main complaint of right eye twitching and stress. She diagnosed acute situational anxiety and tension-type headaches and noted that appellant would return to work on March 5, 2008 limited to eight hours of work a day.

By letter dated March 27, 2008, the Office requested that appellant submit further information. In a response dated April 14, 2008, appellant submitted a letter wherein he noted that on February 4, 2008 he had a dispute with John Cameron with regard to how long it would take him to complete his route. He contended that not all the flats were in the DOIS that date and that the count was inaccurate. Appellant further alleged that he was treated unfairly in that carrier, Stacy Knight, was getting help but that he was not and that Mr. Cameron was harassing appellant. He stated that on February 5, 2008 he began to have twitching in his eye which continued the next day. Appellant also said that on February 7, 2008 he gave his supervisor a change of schedule and that a dispute arose over whether this would be approved or if appellant had followed the proper procedures. He noted that on February 8, 2008 his supervisor required a doctor's note for an appointment and that these notes had not been required before. Appellant also listed other disputes over leave. Finally, Mr. Cameron noted a dispute arose with regard to whether appellant should work longer than eight hours a day. Appellant also submitted a note he wrote on February 8, 2008 requesting light duty with restrictions of not working more than eight hours. He made comments on this note about how other employees were treated and whether doctor's notes were required with regard to leave and return from leave. A note from the employing establishment indicated that appellant's request was approved the same date.

The record contains information with regard to a complaint filed by appellant that was mediated with an agreement reached that all parties work to discuss work-related issues, try to

treat each other with dignity and respect and that the employing establishment agreed to treat the employees equally with other employees regarding workplace issues.

On April 30, 2008 the physician's assistant noted that appellant had no assessment by a psychiatrist to determine whether his condition arose out of employment, but that the diagnosis of acute situational anxiety response was quite normal under these circumstances.

By decision dated July 30, 2008, the Office denied appellant's claim for an emotional condition as appellant did not establish that his alleged emotional condition was causally related to compensable work factors.

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 psychiatric disorder; (2) factual evidence identifying employment factors or 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 emotional condition.[1]

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*,[2] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[3] 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 under the Act.[4] When an employee experiences emotional stress in carrying out his employment 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 results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[5] 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 under the Act. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[5] *Lllian Cutler*, *supra* note 2.

employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[6]

In cases involving emotional 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.[7] 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.[8]

ANALYSIS

The Board finds that the evidence of record establishes that the actions by the employing establishment were administrative in nature. Further, the Board finds that the evidence does not establish that the administrative and personnel actions taken by management in this case were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered by the Act, unless there is evidence that the employing establishment acted unreasonably.[9] Although appellant has alleged that he was treated differently with regard to requests for leave, limited duty or changes in the schedule, there is no evidence that supports appellant's allegations. Furthermore, the Board notes that appellant's request for restrictions that he would not be required to work over eight hours a day, was made on February 8, 2008 and approved that same date. Accordingly, appellant has not presented sufficient evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment.

To the extent that incidents alleged as constituting harassment are established as occurring and arising from appellant's performance of his regular duties, these could constitute

[6] *See Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler, supra* note 2.

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[9] *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

employment factors.[10] Mere perceptions of harassment are not compensable under the Act.[11] Appellant has not proven that he was harassed during his federal employment and therefore, has not established a compensable factor of employment in this regard.

The Board has held that emotional reactions to situations which an employee is trying to meet his position requirements are compensable.[12] However appellant has submitted insufficient evidence to establish his allegations that the employing establishment utilized incomplete figures or used the DOIS unfairly. He has also alleged that he was unfairly treated but does not provide evidence to support these allegations.

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.[13]

CONCLUSION

The Board finds that appellant has not established an emotional condition causally related to compensable employment factors.

[10] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[11] *Jack Hopkins, Jr., supra* note 8. *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[12] *See Lillian Cutler*, *supra* note 2.

[13] *See Margaret S. Krzycki*, 43 EAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 30, 2008 is affirmed.

Issued: June 2, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board