U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. PIRONE and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, Wis.

Docket No. 96-1512; Submitted on the Record;
Issued April 28, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

The Board has duly reviewed the evidence of record and concludes that appellant has not established that he sustained an emotional condition in the performance of duty.

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 emotional reaction, to 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.[1] 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 frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Regarding appellant's allegations of harassment, the Board has stated that the actions of am employee's supervisors of coworkers, which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.[3] However, to support a

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[1] *Dinna M. Ramirez,* 48 ECAB ___ (Docket No. 94-2062, issued January 17, 1997); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[2] *Michael Ewanichak*, 48 ECAB ___ (Docket No. 95-451, issued February 26, 1977); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Michael Ewanichak*, *supra* note 2; *Frederick D. Richardson*, 45 ECAB 454, 463 (1994).

claim based on harassment, there must be some evidence that the harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.[4]

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office of Workers' Compensation Programs or some other appropriate fact finder must make a determination as to the truth of the allegations.[5] The issue is not whether the claimant has established harassment or discrimination under standards applied the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish performance of duty.[6] To establish entitlement to benefits, the claimant must establish a factual basis for the claim, by supporting allegations with probative and reliable evidence.[7]

On August 25, 1993 appellant, then a 36-year-old letter carrier, filed a claim for work-related stress, stating he became aware of the problem when he returned from a work-related injury and he was put on a non-work status and offered disability retirement. In response to the Office's request for additional information, appellant submitted a statement dated November 3, 1993, stating 25 instances of harassment by management. Appellant believed that the purpose of the harassment was to coerce him into quitting or taking disability retirement. Appellant's allegations included that: (1) management changed his starting time to later in the day for no apparent reason; appellant filed a grievance which was pending; (2) management would pull him off an assignment just before he was finished and then ask him why he had not finished it; (3) on January 21, 1993, when appellant misunderstood his starting time, management bypassed the usual procedure and issued him a letter of warning, which the union later removed; and (4) he was reprimanded for abusing his leave, which he was taking to recover from his injury and when he responded that others had worse sick leave records than he, he was told not to compare himself with them because they were women. Other complaints were that management followed appellant into the men's room, would not let him talk to other letter carriers, did not supply his union with needed records, changed his lunch hour, refused to let him case mail, which another worker on light duty was allowed to do, refused to pay damages to his personal vehicle, while doing postal work and an individual named Gary Visser made derogatory remarks about him.

Additionally, appellant alleged that management let him throw mail only when it suited them, that management tracked him if he were out of sight for five minutes, the postmaster read confidential medical reports and discussed them with other people and when he was put on nonwork-duty status, management gave orders to management and some employees not to allow him into the building as he was no longer a part of the unit and was to be treated like any other customer. Appellant stated that the postmaster interrupted his conversation with a union representative telling him he was disrupting the entire office. Appellant also alleged that the

[4] *Michael Ewanichak*, *supra* note 2; *June A. Mesarick*, 41 ECAB 898, 908 (1990).

[5] *Michael Ewanichak*, *supra* note 2; *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[6] *See Martha L. Cook*, 47 ECAB ___ (Docket No. 95-429, issued December 6, 1995).

[7] *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

postmaster turned down a job offer for appellant and when appellant asked her why she had, she said she did not think he wanted it, but she did nothing when he asked her to check on it for him. Appellant stated that his supervisor denied him supervisory training stating she could not depend on him to complete his assignments since he could not complete his carrier duties in eight hours. Appellant also stated that the postmaster told him "they should not have hired him in the first place."

By letter dated August 8, 1994, the employing establishment responded to each of appellant's 25 statements, either denying it had acted as appellant alleged or asserting that its action was within its authority. For instance, in response to appellant's first allegation that management disrupted his schedule by arbitrarily changing his starting time, the employing establishment stated that it had the authority to change the schedules of employees, on light duty to better meet the needs of the operation and stated that the pending grievance addressed whether the change may be stated verbally or must be written.[8] In response to appellant's allegation that management arbitrarily reassigned him to other duties, management stated that when scheduling light-duty assignments, local management allocated time according to past performance by other employees and when appellant was taking considerably more time to complete these assignments, supervisors understandably investigated the incidents. Responding to appellant's third complaint, the employing establishment stated it had not issued a letter of warning, but appellant's work deficiencies were addressed. Responding to appellant's fourth complaint, management denied discriminating against appellant stating that an employee's attendance performance is evaluated on an individual basis. The employing establishment denied following appellant into the men's room, denied ever denying appellant's request for information and stated appellant's excessive socializing with coemployees had been addressed before and after his injury and was addressed in the same manner that other employees who had this problem were addressed.

By letter dated January 5, 1995, the Office requested additional information from appellant including medical documentation. Appellant submitted medical evidence and on December 19, 1994, the Office requested additional information, noting that it had inadvertently lost the contents of appellant's record.

By decision dated March 24, 1995, the Office denied appellant's claim, stating that the evidence of record failed to establish that the injury occurred in the performance of duty.

By letter dated April 15, 1995, appellant requested an oral hearing before an Office hearing representative which was held on November 2, 1995 and at which appellant reiterated and elaborated upon the instances he described in his November 3, 1993 statement.

By decision dated January 19, 1996, the Office hearing representative affirmed the Office's March 24, 1995 decision.

[8] No evidence of grievances or complaints referenced by the employing establishment or appellant are in the record.

None of the incidents appellant described in his November 3, 1993 statement, were part of his regularly or specially-assigned duties but fall within the administrative functions of the employing establishment and as such constitute compensable factors only if there is affirmative evidence that the employer erred or acted abusively in the administration of the matter.[9] In the present case, however, appellant has offered no evidence to establish management's alleged actions of harassment or discrimination against him occurred and therefore he has not shown that management acted abusively or erroneously. In particular, for those instances where appellant complained of shifts in his work assignments, the Board has held that a change in an employee's duty shift may constitute a compensable factor, if appellant's alleged injury is being attributed to the inability to perform his or her regular or specially-assigned job duties, due to the change in the duty shift.[10] Appellant has not alleged that he was unable to perform his work duty due to any change in his assigned starting time. Therefore, the change in appellant's assignment constituted an administrative function of the employing establishment and absent any error or abuse, does not constitute a compensable factor of employment.[11] Further, matters involving the use of leave and procedures relating thereto are administrative and personnel matters that are not directly related to an employee's regular or specially-assigned duties.[12] Therefore, appellant's allegations of actions by the employing establishment regarding his taking sick leave are not compensable factors of employment, as appellant has not shown the employing establishment acted erroneously or abused its discretion.

The Board has held that verbal abuse by a supervisor or coemployee may arise to a compensable factor, but that mere perceptions or generally stated assertions of dissatisfaction with coemployees will not support a claim for an emotional disability.[13] Therefore, appellant's allegation that a supervisor or individual verbally abused him is not a compensable factor, as appellant has not shown it was directly related to his work and he did not provide any corroborating evidence, such as witness statements, to establish his claim.[14] Nor has appellant shown that he was singled out for disparate treatment by the employing establishment. Appellant has therefore not established a compensable employment factor in this respect

Regarding appellant's allegation that management turned down a job offer for him, the Board has held that denials by an employing establishment of a request for a different job or transfers are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially-assigned work duties, but rather constitute appellant's desire to work in a different position.[15] Appellant did not establish he was actually

[9] *Michael Ewanichak, supra* note 2; *Jimmy Gilbreath*, 44 ECAB 555, 559 (1993).

[10] *Peggy R. Lee*, 46 ECAB 527, 533 (1995).

[11] *Id.*

[12] *Martha L. Watson*, 46 ECAB 407, 418 (1995).

[13] *See Alfred Arts*, 45 ECAB 530, 544 (1994).

[14] *Id.*; *Joel Parker, Sr.*, 43 ECAB 220 (1991).

[15] *Frederick D. Richardson*, 45 ECAB 454, 464 (1994).

turned down or that management acted abusively in this regard. Similarly, the Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under the Act unless the refusal constitutes error or abuse.[16] Management admitted that it denied appellant the opportunity to train, but stated that job performance training cannot be demanded by an employee and an equal employment opportunity complaint filed by appellant on this issue was investigated and dropped for lack of merit. Appellant did not show that the employing establishment acted abusively in this regard. Further, such actions as management looking for him if he was gone for five minutes or failing to reimburse him for costs to his vehicles constitute administrative or personnel matters and as such, although generally related to employment, are administrative functions of the employer rather than regular or specially-assigned work duties of the employee.[17] Management stated that appellant's claim for reimbursement, for damage to personal property was filed late, appellant filed a grievance and his local union president rescinded the grievance, based on appellant's untimely filing of the original claim. Management also stated that there were several instances where it was unable to locate appellant and, therefore, it was necessary to supervise appellant closely. Appellant did not show management abused its discretion in this regard and therefore the alleged incidents do not constitute compensable factors of employment. Appellant's allegation that he was not permitted to case mail, as another employee was permitted to do does not constitute a factor of employment, as frustration from not being permitted to work in a particular environment or to hold a particular position.[18]

The Board has held that matters pertaining to union activities are not deemed to be employment factors.[19] Therefore, appellant's allegations relating to union activities, such as having his conversation with a union representative interrupted or management's allegedly not supplying the union with needed records do not constitute compensable factors of employment where, as here, appellant did not show abuse by management.

Appellant has failed to establish compensable factors of employment and therefore has failed to meet his burden of proof in establishing his claim. It therefore is not necessary to address the relevant medical evidence.[20]

[16] *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

[17] *Gregory N. Waite*, 46 ECAB 662, 673 (1995); *Frank A. Catapano*, 46 ECAB 297, 307 (1994).

[18] *Clara T. Norga*, 46 ECAB 473, 482 (1995).

[19] *George A. Ross*, 43 ECAB 346, 353 (1991).

[20] *Sharon R. Bowman*, 45 ECAB 187, 195 (1993).

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 19, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 28, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member