U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESLIE H. JAMES and U.S. POSTAL SERVICE,
POST OFFICE, Billings, Mont.

Docket No. 96-85; Submitted on the Record;
Issued February 17, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish 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 his 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]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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.[5] 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.[6]

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated June 24, 1994, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors and, by decision dated July 7, 1995, the Office affirmed its June 24, 1994 decision.[7] The Board must, thus, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment improperly handled matters relating to work assignments, job transfers, disciplinary actions, performance evaluations and training regimens, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[8] Although these matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[9] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[10]

Appellant alleged that in 1983 he was unfairly denied a promotion; that in 1984, after working two weeks as mail carrier, he was unfairly moved back to his custodian position; that in

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[6] *Id.*

[7] By decision dated May 25, 1995, the Office denied appellant's request for merit review of his claim. Appellant has not requested review of the decision and this nonmerit issue is not currently before the Board.

[8] *See Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[9] *Id.*

[10] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

1990 the postmaster promised him a full-time position with upward mobility in another postal facility but later reneged on his promise;[11] and that between November 1992 and August 1993 he worked as a shuttle bus driver for the employing establishment but the union filed a grievance and the position was taken away from him. Appellant did not submit evidence showing that the employing establishment committed error or abuse with respect to these administrative and personnel matters. Moreover, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer 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.[12] With respect to any stress sustained due to the union's involvement in these matters, the Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.[13]

Appellant further alleged that in 1988, the postmaster of the employing establishment received an award which he should have received for his own accomplishments; that in 1991 and 1992 he was required to use his own equipment, including a tractor and a lawn mower, to perform his duties, but he was not compensated for the use of this equipment; that beginning in April 1992 he was unfairly scrutinized for deficiencies in his work because inspections were held on Mondays and he was the only custodian who worked on Sundays; that Ms. Marcia Litchfield, a supervisor, tried to intimidate him by indicating she spoke to the equal employment opportunity counselor assigned to the claim he had filed and that Ms. Litchfield acted unprofessionally by speaking to him about the claim while in the presence of a coworker; that the employing establishment assured him he would be trained prior to taking a test for a given position, but that he did not receive the training and failed the test; that a grievance was filed against him because he retrieved a package for a customer; and that the employing establishment improperly allowed a mail carrier to attend a demonstration of a new air-conditioning and heating system. Appellant has not submitted evidence showing that the employing establishment committed error or abuse in connection with these administrative and personnel matters. With particular regard to the 1988 award, the evidence reveals that the award was not given to any particular person and appellant was recognized on numerous occasions for his accomplishments. The record further indicates that appellant chose to use some of his own equipment at work and was paid for its use. For these reasons, appellant has not established a compensable employment factor under the Act with regard to these matters.

Appellant asserted that co-workers "belittled" his job and told him that a custodian was not as important as a mail clerk or mail carrier. To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[14]

[11] Appellant asserted that, after another worker filed a grievance, the union determined he could not be placed in the full-time position.

[12] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

[13] *See Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

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

However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[15] In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that he was harassed by his coworkers.[16] Appellant alleged that coworkers made statements which he believed constituted harassment, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made.[17] Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant indicated that he felt his job was threatened when, during a three-week period in mid 1993, a maintenance worker was brought in from another work site to perform some of his job duties. He also alleged that he transferred to a clerk position, a position which he felt aggravated his preexisting physical condition, after being told that he would be terminated from the employing establishment if he did not accept the position. Appellant did not establish the factual aspects of these claims and the Board has previously held that a claimant's job insecurity, including fear of a reduction in force, is not a compensable factor of employment under the Act.[18]

Appellant alleged that, between December 1992 and September 1993, he sustained stress when he worked 60 hours per week in a shift which began at 2:00 a.m. each day. The record supports appellant's claim that he worked extensive overtime, often working more than 55 hours per week, during this period. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.[19] Therefore, appellant has established an employment factor with respect to his long work hours in the 2:00 a.m. shift.

As appellant has implicated a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence.[20] The case will be remanded to the Office for this purpose. After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.[21]

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[15] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[16] *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).

[17] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[18] *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

[19] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

[20] The record contains some medical evidence which suggests that appellant's emotional condition was affected by working long hours in the 2:00 a.m. shift.

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

The decision of the Office of Workers' Compensation Programs dated July 7, 1995 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
February 17, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member