

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD J. RUCKER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Alameda, Calif.

*Docket No. 96-2033; Submitted on the Record;
Issued July 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are whether appellant established that he sustained any disability resulting from his emotional condition after June 1, 1992 and whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review.

On September 15, 1992 appellant, then a 43-year-old letter carrier, filed a notice of occupational disease, claiming that stress at work had caused high blood pressure and ulcerative colitis. Appellant added that his supervisor had conducted two inspections of his route on August 1 and 3, 1992, which was unprecedented and caused undue stress.

On November 5, 1992 the Office informed appellant that he needed to submit additional factual and medical evidence in support of his claim. By letter dated December 13, 1992, appellant submitted a factual statement and affidavits from co-workers describing incidents of supervisory harassment. Appellant explained that his immediate supervisor continued to harass him with allegations of poor performance, but never provided any specific deficiencies and on one occasion called him a "dumb ass man," which upset him so much that he needed to seek counseling.

On February 12, 1993 the Office denied the claim on the grounds that appellant had failed to submit any medical evidence as requested. Appellant timely requested an oral hearing, and submitted medical reports from Dr. William T. Smelser, a licensed clinical psychologist, and Dr. Leon Kaufman, Board-certified in internal medicine, who referred appellant for psychiatric treatment.

On April 24, 1993 appellant filed a second notice of occupational disease, claiming that his preexisting stress disorder had been aggravated by work factors.¹ This claim, A13-1012848, was denied on July 7, 1993 and appellant timely requested an oral hearing.²

The hearing on appellant's 1992 claim was held on September 14, 1993. Subsequently, the hearing representative found that appellant had established as a factor of employment that his supervisor discussed his performance in an unprofessional manner by calling him names and using profanity. The hearing representative also found that appellant's alleged failure to follow procedures, his supervisory counseling about wearing the proper uniform, and his supervisor's two route inspections were administrative matters and thus not within the performance of duty. The hearing representative remanded the case for the Office to obtain a second opinion evaluation.

On remand the Office referred appellant, with the medical records and a statement of accepted facts listing compensable work factors, to Dr. Stephen M. Raffle, a Board-certified psychiatrist. Based on his February 15, 1994 report, the Office accepted appellant's claim for an adjustment disorder which had resolved by June 1, 1992.

On October 11, 1994 the Office denied appellant's 1992 claim for compensation benefits in March 1993 on the grounds that the medical evidence established that after June 1, 1992 he no longer had an emotional condition causally related to compensable work factors. The Office noted two compensable work factors in April 1992, which involved a supervisor's use of profanity and name-calling³ and listed 27 other incidents found to be of an administrative nature or not factually established.

Appellant timely requested an oral hearing on the grounds that the statement of accepted facts furnished to Dr. Raffle omitted a compensable work factor -- namely, that appellant's supervisor had lied about making unprofessional comments on his work performance. At the hearing on April 25, 1995 appellant testified that the employing establishment had done nothing to correct his supervisor's behavior toward him and that Dr. Raffle failed to consider the type of harassing treatment appellant underwent at work. Appellant also argued that the change in his route from driving to walking was a compensable work factor.

On July 7, 1995 the hearing representative denied the claim on the grounds that the medical evidence established that appellant's work-related disability had resolved by June 1, 1992. Appellant timely requested reconsideration and submitted copies of evidence already in

¹ Appellant also filed a notice of traumatic injury on December 29, 1994, claiming that his hypertension and high blood pressure were caused by his employment. The Office denied this claim on June 29, 1995.

² Following the hearing on December 13, 1993, the hearing representative issued a decision on February 26, 1996 remanding the claim to the Office for further evidentiary development. The hearing representative instructed the Office to combine this claim with the 1992 claim, No. A13-995336.

³ The hearing representative found as factually established that appellant's supervisor called him a "dumb ass man" on April 10, 1992 and told him on April 21, 1992 that his performance "sucked," that everybody knew this, and that he acted stupid.

the record, stating that he continued to endure the type of supervisory harassment that is not actionable or appears to be trivial unless the cumulative effect is considered.

On October 18, 1995 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was immaterial and repetitious and therefore insufficient to warrant review of the prior decision. Subsequently, the Office issued a decision on March 26, 1996, incorporating the findings of the decisions dated October 11, 1994 and July 7, 1995 and noting that these decisions covered the matters decided by the hearing representative's decision dated February 26, 1996.

On March 30, 1996 appellant again requested reconsideration, noting that all his claims for stress should be consolidated and addressed as a whole and requesting an examination by a more qualified physician.

On June 6, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant review of the prior decision.

The Board finds that appellant has failed to establish that his emotional condition was causally related to work factors after June 1, 1992.

Under the Federal Employees' Compensation Act,⁴ 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 factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁵

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.⁶ There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.⁷ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,⁸ and disabling conditions caused by an employee's fear of

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

⁶ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁷ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

⁸ *Sharon J. McIntosh*, 47 ECAB ____ (Docket No. 94-1777, issued August 28, 1996).

termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁹

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.¹⁰ However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.¹² Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which she claims compensation.¹³ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹⁴

In this case, the Board finds that, with the exception of the April 1992 incidents, appellant has identified no compensable work factors that are substantiated by the record and has failed to establish that the employing establishment either erred or acted abusively or unreasonably in the administration of personnel matters.

The April 1992 compensable work factors involving a supervisor's verbally abusive remarks to appellant were found by Dr. Raffle to have caused appellant's adjustment disorder and resulted in an employment-related disability for not more than one month. Thus, Dr. Raffle concluded that by June 1, 1992 the psychological effects from the compensable work factors had ceased, as demonstrated by appellant's psychological testing. Dr. Raffle added that appellant's current condition (in 1994) revealed no diminished function in daily activities, that he did not have any residuals of the emotional condition caused by the compensable work factors, and that no treatment was indicated.

Dr. Smelser stated in a March 18, 1993 report that appellant's occupational stress was brought on and continued by unsatisfactory interpersonal relationships at work, that is, by "unprofessional treatment of [appellant] by individuals in a supervisory capacity." Dr. Smelser elaborated in his September 21, 1993 letter, diagnosing adjustive reaction to occupational stress (chronic), noting the supervisor's name-calling, and relating appellant's statements that he

⁹ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

¹⁰ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

¹¹ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

¹² *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹³ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹⁴ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

became offended by noncorrective criticisms from his supervisors and experienced “over-controlling reactions from others.”

However, Dr. Smelser provided no specific dates or work factors causing appellant’s emotional condition and offered no explanation for his conclusion that appellant’s emotional condition was caused by stress at work. Nor did he distinguish between the effects of compensable work factors and those which were either not compensable or not factually established. Therefore, his report is insufficient to establish any disabling mental condition in March 1993.¹⁵

The 18 incidents listed as factual in the Office’s October 11, 1994 decision involved administrative or personnel actions. While appellant generally alleged harassment, he provided no probative evidence of error or abuse on the part of his supervisors in administrative or personnel matters.¹⁶ Appellant strongly believed that he was treated badly by the employing establishment’s managers, but his feelings about his work performance, his personality conflict with his supervisor, and his reactions to various administrative actions are self-generated and thus are not compensable under the Act.¹⁷

The Board also finds that the Office acted within its discretion in refusing to reopen appellant’s claim for merit review.

Section 8128(a) of the Act¹⁸ provides for review of an award for or against payment of compensation. Section 10.138(b)(1) of the Office’s federal regulations provides, in pertinent part, that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed.¹⁹

With the written request, the claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.²⁰

¹⁵ See *Steven M. Beebe*, 41 ECAB 633, 637 (1990) (finding that a physician’s opinion that indicated a causal relationship between appellant’s emotional condition and his employment by checking “yes” on a medical form was, without explanation or rationale, of little probative value).

¹⁶ See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate any compensable factors of employment or allegations of error or abuse on the part of the employing establishment).

¹⁷ See *Sandra F. Powell*, 45 ECAB 877, 886 (1994) (finding that an employee’s mere perception of harassment or discrimination was not compensable).

¹⁸ 5 U.S.C. § 8128(a).

¹⁹ See *Vincente P. Taimanglo*, 45 ECAB 504 (1994). While no special form is required, Office procedures provide that a reconsideration request must be in writing, identify the decision and specific issues for which reconsideration is sought, and be accompanied by relevant and pertinent new evidence or argument not previously considered.

²⁰ 20 C.F.R. § 10.138(b)(1).

Section 10.138(b)(2) of the implementing regulations provides that any application for review which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.²¹

With his March 30, 1996 reconsideration request, appellant submitted affidavits dated May 26, 1993 and December 6, 1995 from his supervisor, claiming that this evidence demonstrated that she had lied about calling him a “dumb ass man.” The Board finds that this evidence is immaterial because the record establishes that the incident was a compensable work factor.

With his July 21, 1995 reconsideration request, appellant submitted copies of evidence previously submitted and considered by the Office in its July 7, 1995 decision. The Board finds that this evidence is either repetitious or not pertinent to the issue of whether appellant had any disability causally related to work factors after June 1, 1992. Appellant’s letters requesting reconsideration generally disparage the employing establishment’s management but provide no valid arguments for error in fact or law. Therefore, the Board finds that the Office properly declined to reopen appellant’s claims for merit review.²²

The June 6 and March 26, 1996, and the October 18 and July 4, 1995 decisions of the Office of Workers’ Compensation Programs are affirmed.

Dated, Washington, D.C.
July 22, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

²¹ 20 C.F.R. § 10.138(b)(2).

²² See *Norman W. Hanson*, 45 ECAB 430, 435 (1994) (Office properly declined to reopen claim because appellant presented no new and relevant evidence).