U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE HAYWOOD and U.S. POSTAL SERVICE,
POST OFFICE, Akron, Ohio

Docket No. 96-1884; Submitted on the Record;
Issued June 3, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that his emotional condition arose in the performance of duty and was causally related to factors of his employment.

On December 28, 1995 appellant, then a 40-year-old mail handler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he developed stress/anxiety causally related to factors of his federal employment. On the claim form appellant alleged management harassment by: (1) his supervisor tried to deny him of a preferred bid assignment through bribery; (2) management threatened him on the work floor; (3) management was hostile and verbally took him off a bid job; and (4) management denied him the opportunity to see a union steward in a timely manner such that he "went home stressed out." Appellant submitted a narrative statement regarding his claim which detailed the allegations he made on his claim form. On the back of the form the employing establishment noted that appellant and his witness were placed on a job neither wanted, they are both angry and facing disciplinary action.

In a detailed statement dated December 29, 1995, appellant stated that his current problems began when Annette McDade became supervisor of his unit. He also alleges that Ms. McDade tried to bribe him not to take a higher level job bid. Appellant alleges that Mr. Fenstemaker said to appellant and another employee that he wanted "an eight-hour work for an eight-hour pay" and that he felt embarrassed, insulted and threatened. Appellant alleges that management, through this comment, broke Article 16 that minor discussions are to be held in private quarters. Next, appellant alleges that his supervisor spoke "in a loud and hostile manner" when she complained about his work performance and taking him off the breakdown. Appellant stated that he then asked to see a union steward and that his supervisor denied his request. Next, appellant alleged that due to his supervisor's "hostile and impatient attitude with me and denial to see a steward in a timely manner" he felt "demeaned, powerless and utter outrage." Lastly, appellant alleged that Ms. McDade and Mr. Fenstemaker went out of "their way to make public specticles (sic) out me and Ms. McCrackin, to alienate us from co-workers and other management personnel."

The record contains a medical record from Dr. Atul Goswami, dated December 29, 1995 which diagnosed work-related stress. Dr. Goswami noted that appellant complained that he had "severe stress at work due to being [harassed] intimidated and [publicly] embarrassed."

In a January 24, 1996 letter, the Office of Workers' Compensation Programs advised appellant of the additional evidence needed to establish his claim, including a detailed description of the work factors alleged to have caused his emotional condition, and a rationalized medical opinion describing the causal relationship between those cited factors and the claimed condition.

The employing establishment submitted letters from Annette McDade, appellant's supervisor, and Gary Fenstemaker, manager distribution officer, denying appellant's claims that he has been harassed. The letters from both officials stated that appellant has had work-related problems.

By decision dated February 16, 1996, the Office denied appellant's claim on the grounds that fact of injury was not established.[1] The Office found that appellant did have a discussion with his supervisor regarding getting a fair day's work for a fair day's pay, but that there was no evidence that the employing establishment erred or acted abusively in discussing this matter with him. The Office found that the remaining allegations were unsubstantiated and thus not accepted as having occurred as alleged. The Office thus found the evidence of record insufficient to establish that appellant suffered an emotional condition due to factors of his employment on December 28, 1995.

On February 16, 1996 the Office received a copy of a medical record dated December 29, 1996 which diagnosed work-related stress in which appellant informed his physician that he had been harassed, intimidated and publicly embarrassed at work by management.

Appellant submitted his own statement as well as statements from a co-worker and a union steward in support of his claim which were received by the Office on February 20, 1996.

In a letter dated February 20, 1996, the Office acknowledged receipt of the statements and advised appellant that the statements he submitted failed to establish that his employer acted erroneously or abusively on December 28, 1995. The Office also referred appellant to appellate procedures available to him which were set forth in the February 20, 1996 decision.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

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 her federal employment.[2] To establish his claim that he

[1] The Board notes that additional evidence was received by the Office after the February 16, 1996 decision. Since this evidence was not before the Office at the time of its decision, the Board cannot consider such evidence on this appeal. 20 C.F.R. § 501.2(c).

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

sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence establishing 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.[3]

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4]

When working conditions are alleged as factors in causing 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] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with reliable, probative and substantial evidence.[6] When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.[7]

The initial question is whether appellant has alleged and substantiated compensable factors of employment. As noted above, not every situation that has some connection with employment will give rise to a compensable factor of employment. Appellant has alleged that he was subjected to harassment by being bribed to not take an assignment, management hostility and being denied the opportunity to see a steward, but the record does not support that the harassment did in fact

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

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *See Barbara Bush*, 38 ECAB 710 (1987).

[6] *See Ruthie M. Evans*, 41 ECAB 416 (1990).

[7] *See* Gregory *J. Meisenberg*, 44 ECAB 527 (1993).

occur.[8] Mere perceptions of harassment are not compensable under the Act.[9]

Appellant alleged, and the Office accepted, that appellant's supervisor did make a comment about getting a fair day's work for a fair day's pay. There is no evidence, however, which disclosed error or abuse on the part of the employing establishment in discussing working for his pay. The Board finds that this does not constitute harassment or verbal abuse toward appellant.[10]

As the evidence of record fails to establish a compensable factor of employment, the Board finds that appellant has failed to establish that his emotional condition is causally related to his federal employment.[11]

The decision of the Office of Workers' Compensation Programs dated February 16, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 3, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[8] *Jimmy Gilbreath*, 44 ECAB 555 (1993); *June A. Mesarick*, 41 ECAB 898 (1990).

[9] *See Ruthie M. Evans*, 41 ECAB 416 (1990).

[10] *Compare David W. Shirey*, 42 ECAB 783 (1991) (where claimant alleged that he was insulted by his supervisor, the Board held that verbal altercations sufficiently detailed and supported by the record may constitute factors of employment).

[11] As appellant has not alleged a compensable factor of employment, the medical record need not be discussed; *see Margaret S. Kryzcki*, 43 ECAB 496 (1992).