U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID M. BLAIR and U.S. POSTAL SERVICE,
CHESTNUT STREET POST OFFICE, Philadelphia, Pa.

Docket No. 96-2117; Submitted on the Record;
Issued May 26, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition in the performance of duty on or before November 15, 1994 as alleged.

On November 15, 1994 appellant, then a 40-year-old tractor trailer operator, filed a notice alleging that he sustained an emotional "stress" condition on or before that day in the performance of duty due to harassment by his supervisor, Mr. Leroy Feldsher. Appellant alleged that Mr. Feldsher changed the start of appellant's duty shift from 3:00 p.m. to 2:00 p.m., adversely affecting child care arrangements for his 17-month-old son. Appellant asserted that Mr. Feldsher would not explain why he did this, and stated that he did not have to explain anything to appellant.[1]

In December 20 and 22, 1994 letters, the Office of Workers' Compensation Programs advised appellant of the type of medical and factual evidence needed to establish his claim, including rationalized medical evidence supporting a causal relationship between work factors and the claimed emotional condition.

In a December 2, 1994 report, Dr. John Bjornson, a psychiatrist to whom appellant was referred by the employing establishment, noted examining appellant on November 29, 1994 and indicated that appellant had a history of psychiatric illness. Dr. Bjornson described the November 15, 1994 incident in which Mr. Feldsher advised appellant of his work schedule change, and that appellant was upset due to its adverse effect on child care arrangements for his 17-month-old son. Dr. Bjornson noted appellant's contention that Mr. Feldsher changed

[1] In a November 16, 1994 statement, Mr. Edward Lubicky, appellant's second line supervisor, noted that on November 15, 1994 after meeting with Mr. Feldsher, appellant alleged that his change in start time was racially motivated, requested telephone numbers of EEO (Equal Employment Opportunity) and EAP (Employee Assistance Program) counselors, and requested family leave under the Family Medical Leave Act (FMLA).

appellant's schedule to give preferential treatment to Mr. John Gilbert, one of appellant's coworkers, who was a union steward. Dr. Bjornson noted findings on mental status examination, commenting that appellant was apprehensive, agitated and frantic and diagnosed a mixed personality disorder.

In a December 4, 1994 report, Dr. Bjornson stated that appellant's mixed personality disorder was longstanding, stemming in part from a dysfunctional childhood. Dr. Bjornson noted that the disorder limited appellant's coping skills and tolerance for "stress and frustration." He opined that appellant's current exacerbation was due to "babysitting difficulties."

In December 8 and 22, 1994 reports, Dr. Irving S. Wiesner, an attending Board-certified psychiatrist, stated that appellant continued under his care and was medically unable to return to work.

By decision dated January 20, 1995, the Office denied appellant's claim on the grounds that the claimed condition was not established to have occurred in the performance of duty.

Appellant disagreed with this decision and requested a hearing before a representative of the Office's Branch of Hearings and Review, held July 11, 1995.[2] At the hearing, appellant described his efforts to get his shift start time changed to later than 2:00 p.m., as he needed to care for his son until the child's mother returned at 2:15 p.m. Appellant noted that he did not want to put his son in day care and did not trust others to care for the child. He noted filing a grievance due to the change in his work schedule, which was settled when a coworker agreed to switch jobs with appellant so that appellant could begin work at 4:00 p.m. Appellant stated that he subsequently bid on and received a position starting at 5:00 p.m. He submitted additional documentation regarding the grievance settlement reports from Dr. Weisner, employing establishment health notes and documents relating to his requests for family leave.

In a November 22, 1994 report, Dr. George K. Avetian, an attending osteopath, noted treating appellant since 1990. He stated that appellant was "responsible for the care of his 17-month-old son until the child's mother returns from work at 2:15 p.m. daily."

By decision dated August 30 and finalized August 31, 1995, the Office hearing representative affirmed the January 20, 1995 denial of appellant's claim, finding that the November 15, 1994 schedule change was an administrative matter not within the performance of appellant's duties, and that appellant had not shown that the employing establishment acted with error or abuse. The hearing representative concluded that appellant's condition was due to frustration at not being permitted to work a desired schedule, and therefore was noncompensable.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty on or before November 15, 1994 as alleged.

[2] In a January 11, 1995 statement, appellant alleged that his work schedule was changed to accommodate coworker Mr. Gilbert, and accused Mr. Gilbert of improperly using union rules for personal gain. He attached employing establishment transportation schedules which he asserted showed that his schedule did not need to be changed.

To establish appellant's occupational disease claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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] Such opinion must be based on a complete factual and medical history, be reasonably certain, and be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[4]

However, workers' compensation law does not apply to each and every injury or illness somehow related to employment. Where disability results from an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned duties or employment requirements, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Federal Employees' Compensation Act.[5]

In this case, appellant attributed his claimed emotional condition to a change in his shift schedule, which would have necessitated a change in his child care arrangements. However, disability is not covered where it results from frustration from not being permitted to work in a particular environment or during particular hours, as in this case. Disabling conditions resulting from an employee's desire for a different job or working conditions do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[6] Thus, appellant has failed to establish a compensable factor of employment, and consequently has failed to meet his burden of proof.

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

[4] *Id*.

[5] *Donna Faye Cardwell*, *supra* note 3; *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated August 30 and finalized August 31, 1995 is hereby affirmed.

Dated, Washington, D.C.
May 26, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member