U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN C. REIS and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, Fla.

Docket No. 97-699; Submitted on the Record;
Issued February 23, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On May 25, 1994 appellant, then a 36-year-old letter carrier, filed a notice of occupational disease and claim for compensation alleging that he sustained job-related stress due to employment factors. Appellant did not stop work.

On his claim form and in several narrative statements, appellant described the factors which he believed caused him to sustain an emotional condition. Appellant stated that in retaliation for his having sustained an earlier on-the-job injury and for having filed several Equal Employment Opportunity Commission complaints against the employing establishment, the employing establishment denied him union representation, required that he work at a location inconvenient to his home rather than allow him to return to his regular duty station and ignored the physical restrictions placed on him by his physician, that he work no more than eight hours a day. In addition, the employing establishment also gave appellant a letter of warning and a letter of suspension for failure to follow instructions and an additional letter of warning regarding appellant's use of a copy machine for personal use. Appellant stated that when he requested that the union representative provide him with copies of his suspension papers, the union representative got angry with him and told him to find someone else to represent him. Appellant additionally asserted that although he had filled out an occupational disease claim prior to May 25, 1994, the employing establishment did not forward this claim to the Department of Labor, that Mr. J.E. Bloom, Area Manager, told him that he was going to do everything in his power to see that appellant's compensation was terminated and that Mr. Ron Steedlye, Station Manager, met him at his vehicle and threatened that he was going to make his job so unbearable that he would not be able to stand it. Appellant also asserted that Mr. Alvin C. Walker, Customer Service supervisor, told him that he had two hours of mail to deliver, when in reality there were three hours of mail, and further yelled at him and told him that he was just another body and that he had no knowledge of his work restrictions. In addition, appellant alleged that

gas was deliberately drained from his postal vehicle and that, in an attempt to kill him, the employing establishment tampered with the steering column of his postal vehicle causing it to crash.

In a decision dated November 20, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that appellant had not established any compensable factors of employment, and therefore had not established that his emotional condition occurred in the performance of duty. The Office declined to reach the medical evidence of record. In decisions dated February 7 and March 26, 1996, following requests for reconsideration by appellant, the Office found that additional evidence submitted by appellant was insufficient to warrant modification of the November 20, 1994 decision. Finally, in a decision dated August 5, 1996, the Office found that the additional evidence submitted by appellant was immaterial, and therefore insufficient to warrant review of the prior decision.

The Board finds that the case is not in posture for decision.

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. 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.[1] From not being able permitted to work in a particular environment or to hold a particular position.

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.[2] 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.[3]

With respect to appellant's assertions regarding harassment, threats and disrespectful treatment by Mr. Bloom, Mr. Steedlye and Mr. Walker, to the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and

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

[2] *See Margaret S. Krzycki*, 43 ECAB 496 (1992); *Norma L. Blank*, 43 ECAB 384 (1992).

[3] *Id*.

arising from appellant's performance of his regular duties, these could constitute employment factors.[4] 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.[5] In the present case, the record contains a statement by Mr. Bloom in which he stated that appellant's allegations that he threatened to have his compensation stopped and to see that he was terminated from his job were totally false, and that at no time did he ever attempt to threaten or intimidate appellant. The record also contains a statement from Mr. Walker, appellant's supervisor at one time, who stated that he had never yelled at appellant, or any other employees, and never misrepresented the amount of work he was assigning to appellant. Finally, the record contains a statement from Mr. Steedlye, who stated that on September 8, 1993, after appellant was late returning to the employing establishment and did not call to report the delay in a timely manner, he simply met appellant at his postal vehicle and expressed concern for appellant's whereabouts. Mr. Steedlye further denied that anyone at the employing establishment had tampered with appellant's postal vehicle.[6] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against as alleged.[7] Appellant claimed that supervisors made statements and committed acts which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements were made or that the actions occurred.[8]

With respect to appellant's claim that he was unfairly disciplined by the employing establishment for his failure to follow instructions and for using the employing establishment copy machine for personal use, the Board notes that these were administrative actions by the employing establishment, and that the general standard for allegations involving administrative or personnel matters is that although these are related to employment, they are primarily duties of the employer rather than regular duties of the employee. In order to establish a compensable factor, there must be evidence of error or abuse by the employing establishment.[9] Appellant has provided no evidence that the employing establishment acted improperly, and, therefore, the employing establishment's disciplinary actions against appellant cannot be considered compensable factors of appellant's employment.

Regarding appellant's claim that he sustained stress due to his assignment to a duty station inconvenient to his home, as noted above, disability is not covered where it results from

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

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

[6] The Board also notes that the record does not contain any statements of coworkers regarding the issue of whether appellant was harassed by Mr. Bloom, Mr. Walker or Mr. Steedlye.

[7] *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).

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

[9] *See Donald E. Ewals*, 45 ECAB 111 (1993).

such factors as frustration from not being permitted to work in a particular environment or to hold a particular position.[15] Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant further alleged that he was denied union representation with respect to a grievance he filed, and that the union representative shouted at him and told him to find someone else to handle his claim. Actions taken by the employing establishment regarding the submission of grievances are administrative matters and not duties of the employee. Where the evidence demonstrates that the employing establishment has neither erred or acted abusively in administration of personnel matters, coverage will not be afforded.[10] Moreover, grievances, by themselves, do not establish that workplace harassment or unfair treatment occurred.[11] Finally, 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.[12] Therefore, appellant has not established a compensable factor of employment with respect to these particular issues.

Regarding appellant's assertion that he sustained stress due to the fact that the employing establishment ignored the physical restrictions placed on him by his physician and required him to work more than eight hours a day, the Board notes that the record contains several items of corroborating evidence which appear to substantiate appellant's contention. On the reverse side of appellant's claim form a Mr. Andre Thomas acknowledged that appellant was restricted to working eight hours a day, and appellant submitted numerous time cards which appear to indicate that appellant in fact worked more than eight hours per day during certain periods. To the extent that these alleged incidents and conditions, if established, implicate regular or specially assigned duties or a requirement imposed by the employment, they would represent compensable employment factors.[13] The Office, however, did not make any factual findings regarding these claimed employment factors. Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and has an obligation to see that justice is done.[14] The Office has the responsibility to develop the factual evidence in the case particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.[15] Therefore, on remand, the Office should further develop the factual evidence necessary to determine whether the employing establishment required appellant to work outside of his physical restrictions and, if the Office finds a compensable factor of employment established, should examine the medical evidence of record to determine if appellant has further established entitlement to compensation

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[10] *See Sharon R. Bowman*, 45 ECAB 187, 194 (1993).

[11] *Parley A. Clement*, 48 ECAB ____ (Docket No. 95-566, issued January 17, 1997).

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

[13] *See James D. Carter*, 43 ECAB 113 (1991) (with respect to overwork as a compensable employment factor).

[14] *William J. Cantrell*, 34 ECAB 1223 (1983).

[15] *Henry Ross, Jr.*, 39 ECAB 373 (1988).

benefits.[16] After such further development the Office should issue a *de novo* decision on the matter.

The decisions of the Office of Workers' Compensation Programs dated August 5, March 26 and February 7, 1996 are hereby set aside and the case remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
February 23, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[16] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).