U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of J.K. and U.S. POSTAL SERVICE,
POST OFFICE, Honolulu, Hawaii

Docket No. 97-1070; Submitted on the Record;
Issued January 28, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that he developed an aggravation of his preexisting schizophreniform reaction/depressive reaction with psychotic features in the performance of duty, causally related to compensable factors of his federal employment.

On May 16, 1996 appellant, a 34-year-old mailhandler, filed a claim alleging that his schizophreniform reaction/depressive reaction with psychotic features which preexisted his employment had been worsened and was aggravated by supervisors who harassed and discriminated against him. Appellant claimed that he became aware of his illnesses during his military service in 1989 to 1990 but that his conditions worsened in June 1994. He indicated that he was receiving a 30 percent Veterans Administration disability due to his emotional condition.

In attached statements appellant outlined the work factors to which he attributed the aggravation of his preexisting condition. Appellant alleged that supervisor Gladys Monroe treated him with disrespect and indignity, that he had an ongoing Equal Employment Opportunity (EEO) case against her, that he reported Wayne Villarmia and Walter Chang to their supervisors, that on June 23, 1994 he called in sick and Mr. Villarmia said that he was abusing sick leave and that he would talk to appellant when he returned, that he now had an attitude towards certain individuals who were abusing him which affected his work, and that he had observed Mr. Villarmia observing other individuals driving mules with more than three dollies and saying nothing. Appellant further alleged that he was verbally abused by Mr. Villarmia, that Mr. Chang was telling him what to do regarding mail handling, that Mr. Villarmia was observed playing cards, that when he told Mr. Chang he needed a fan Mr. Chang told him to go find one and told him that he was a "cry baby," that Mr. Villarmia called in sick but went to play golf, and that Mr. Villarmia was directing him where to work, from one area to another. Appellant alleged that Ms. Monroe told him that he was not allowed to be in the Transportation office, that no other supervisor enforced that rule, that Ms. Monroe pointed her finger at him and directed him not to talk with another employee, that his individualism was not being upheld and he was not treated with dignity, that Mr. Villarmia confronted him about a work injury during an

unauthorized activity, and that others also performed the unauthorized activity without criticism. Appellant alleged that he had faced harassment and roadblocks, that he received disrespectful remarks like "hey listen kid," and "you [ha]d better clean up your act," that Ms. Monroe did not provide him with extra help, that Ms. Monroe told him she was tired of his "baloney" and he told her he was "tired of her shit" and that she was a liar, and that Ms. Monroe began enforcing the 20-minute break rule regarding him but not others.

In response the employing establishment stated that supervisors Mr. Villarmia and Mr. Chang denied verbally abusing appellant, but felt that they were subjected to verbal abuse from him, and that supervisors had discretion to tell employees where to work. Mr. Villarmia stated that supervisors were constantly giving instructions as to where work needed to be performed, that when appellant called in for sick leave he remembered several earlier sick leave requests from appellant, advised what constituted abuse of sick leave, and stated that they would talk about it later, that when appellant was pulling more than three dollies with his mule Mr. Villarmia explained that appellant's driving privileges could be revoked for not following procedures, that he always used a conversational tone to appellant even when appellant got belligerent and defensive, and that appellant's behavior had gotten him into numerous confrontations with other employees and supervisors. Mr. Chang denied calling appellant a "cry baby," that he picked on appellant, or that he treated appellant disrespectfully. He also noted appellant's confrontations with other employees and supervisors. Ms. Monroe provided a statement claiming that she always treated him like anyone else but that he usually raised his voice, cursed and had a tirade. She indicated that appellant became irritated when anyone told him what to do, that he would only listen to what he wanted to hear, that he constantly questioned supervisory competence, that he worried about what everyone else did or did not do, and that he threatened that one day she would be killed. Ms. Monroe noted appellant's disagreements with other employees and concluded that his track record spoke for itself.

The employing establishment submitted a letter of suspension charging appellant with failure to follow instructions and for using abusive language to Supervisor Monroe. Appellant filed a grievance which was settled at Step 2 with grievant on notice that his behavior was unacceptable and would not be tolerated, with the suspension reduced to a discussion. The employing establishment also submitted multiple employee witness statements attesting to appellant's loud, rude and profane behavior towards supervisors. In a July 26, 1996 letter, the employing establishment advised the Office that, in response to appellant's EEOC complaint, an investigation had been completed, no supervisor was made to give appellant a verbal apology, and it was ruled that the employing establishment neither erred nor acted in an abusive manner in supervisory administrative matters. The employing establishment concluded that the employment factors alleged by appellant were not factors of his employment.

By decision dated October 29, 1996, the Office rejected appellant's claim finding that an injury arising out of the performance of duty was not established. The Office found that the incidents appellant alleged were not part of his regularly or specially assigned duties, were matters of supervisory discretion, and did not demonstrate administrative error or abuse. It further found that incidents of harassment and discrimination were not supported by factual evidence, and were not found by the EEOC to have occurred.

The Board finds that appellant has failed to establish that he developed an aggravation of his preexisting schizophreniform reaction/depressive reaction with psychotic features.

To establish appellant's claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (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.[1] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[2]

Workers' compensation law is not applicable 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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[3] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[4] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or

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

[2] *See Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell, supra* note 1.

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

[4] *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[5]

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.[6] 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 probative and reliable evidence.[7] 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.[8]

In the instant case, appellant has failed to establish compensable factors of his employment as causing an aggravation of his preexisting emotional condition. Appellant alleged that multiple actions by various supervisors aggravated his condition. The Board notes that these actions, such as instructing subordinates how and where and when to work, reminding subordinates of the rules and regulations, and conducting other administrative, personnel and personal activities within their scope of employment and discretion, relate to the supervisor's duties and do not arise out of appellant's regular or specially assigned duties, such that they do not constitute incidents of his specific employment. Consequently, they are not compensable incidents under the Act. Further, no evidence of employing establishment or supervisory error or abuse in administrative matters has been shown which could bring such supervisory administrative actions into the scope of appellant's employment.

Additionally, with regard to appellant's allegations of harassment, abuse and discrimination, it is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.[9] An employee's charges that he or she was harassed or discriminated against are not determinative of whether or not harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[10] In this case, the Board notes that appellant's allegations of

[5] *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

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

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

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

[9] *Helen Casillas*, 46 ECAB 1044 (1995); *Ruth C. Borden*, 43 ECAB 146 (1991).

[10] *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

harassment, abuse and discrimination are not supported factually by the record and were not found upon EEOC investigation to have occurred. Consequently, they do not constitute compensable factors of appellant's employment.

As appellant has failed to implicate any compensable factors of his employment in aggravating his preexisting emotional conditions, the medical evidence of record need not now be considered.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 29, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 28, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member