

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH E. BURNS and U.S. POSTAL SERVICE,
DALLAS BULK MAIL CENTER, Dallas, Tex.

*Docket No. 97-572; Submitted on the Record;
Issued March 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that his emotional condition is due to factors of his federal employment.

On June 12, 1996 appellant, then a 40-year-old sack sorter operator -- modified limited duty, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he experienced stress due to various incidents at work and that he first realized the stress was work related on June 12, 1996. Appellant alleged that he had been singled out by a supervisor since he had been on limited and light duty, that his request for annual leave and sick leave had been denied or canceled while he was on leave, that the police were called because he was in the break area and he was denied access to his union steward.

In a memorandum dated June 18, 1993 appellant was advised that he was placed on restricted sick leave and that he must submit supporting "medical documentation or other acceptable evidence." The employing establishment informed appellant as to the documentation required to support his request for sick leave.

Appellant submitted a copy of a request for leave dated May 27, 1995 which checked the type of absence as leave without pay and under remarks noted "out indefinitely."

In a May 19, 1995 statement, appellant stated that he arrived at work at 6:00 a.m., he had pain in his back while working the LIM belt so he told a coworker he was going to move around to ease the pain. Appellant stated that John Pouch saw him while he was going to the locker room and Mr. Pouch followed him. Upon his return ten minutes later to the LIM belt appellant met Marshal Washington who called Gary Gale, appellant's supervisor, to tell him that appellant was not working on the LIM belt. Appellant stated that he next went to look for Mr. Gale because he needed to leave at 10:00 a.m. but could not find him at his desk so went to the break area. While appellant was talking to someone on the loading belt, Mr. Gale walked up and said he needed to talk to appellant. Appellant stated that Mr. Gale spoke to him in a loud and vulgar

voice saying that he did not want to catch appellant out of his work area and that he was not satisfied with his job performance. Mr. Gale then put appellant on the cull chute and said he had better stay there or he would get appellant terminated. Appellant also stated that Mr. Gale told him that he could not use the rest room until a break. Appellant stated that he got sick and asked Mr. Gale to leave because he was sick. Mr. Gale told appellant he would need documentation before he came back. Appellant stated that he was on sick leave due to stress for the period May 19 to June 6, 1995. Appellant also stated that someone filled out a leave form putting him down for leave without pay during this period.

In a statement dated May 19, 1995, Mr. Gale denied using a vulgar voice to appellant. He agreed that he did tell appellant that he was not satisfied with his work habits as he walked around a lot and talked to employees he met. Mr. Gale denied telling him that he could not use the rest room. He said that he had doubts about the validity of appellant being sick as appellant indicated that he would use his sick leave as Mr. Gale would not authorize annual leave. Mr. Gale also stated that appellant did not tell him about his throwing up or anything else.

In a note dated May 25, 1995, Dr. Andrew R. Block, stated that appellant returned to his job at the employing establishment but feels that they want to get rid of him. Appellant related that he believed they were trying to goad him into a fight and that they gave him assignments outside of his work restriction. He indicated that he believes his work situation is difficult, that he has been out for six days and he will be filing a stress claim.

In a progress note dated June 2, 1995, Dr. Mark A. Doyne, appellant's treating physician, noted that appellant informed him that his supervisor had been harassing him by asking him to do things outside of his work restrictions.

In a statement dated June 9, 1996, Ms. Ella Beadford stated that she saw Mr. Gale questioning appellant on where he was supposed to be and whether he was on the clock or not. Ms. Beadford also stated that Mr. Gale told someone to get the place and told appellant to sit down. Appellant replied that Mr. Gale could not make him sit down.

In a statement dated June 12, 1996, appellant stated he was working on his day off when Mr. Gale asked him what he was doing and appellant stated he should talk to his supervisor. Appellant stated that Mr. Gale informed him that he needed to know as Mr. Gale was having a meeting with Mr. Sam Butler, the union steward, and appellant needed to be at the meeting. Mr. Gale told appellant when the meeting was and where. Appellant talked to Mr. Butler who told appellant he was not sure when he would be able to get to the meeting and that C.C.R. would call him over the head system. Appellant stated that after break, Mr. Jessay Onnie, a supervisor of his area, told appellant that he was wanted in the C.C.R. Appellant stated that the meeting was about appellant being in the break room on June 6, 1996 during an unauthorized break.

In an undated statement, Mr. Gale stated that he did question appellant on June 12, 1996 and that appellant told him to page him for the meeting he was setting up at 9:30 a.m. Mr. Gale stated that appellant did not show up for the meeting and that he and Mr. Butler were waiting.

In an undated statement, appellant related events that occurred during June 1996 when he tried to talk with personnel in B.M.C. and talked about how he believes labor relations are trying to prevent or delay him from seeing a B.M.C. manager.

In an undated statement, appellant related events that occurred on June 9, 1996 while at work. Appellant alleges that Mr. Gale came over and questioned him as to whether he was on break or not. Mr. Gale informed appellant that he was on an unauthorized break when appellant indicated he was on break. Appellant stated that Mr. Gale said nothing to the employee he was talking to and threatened to call the police on him to have him escorted out of the building. Appellant indicated he believed that Mr. Gale was deliberately trying to provoke him into an argument so he could be put off the clock.

In an undated statement, appellant related the various problems he has had since he was injured. He stated that he was injured in February 1992, returned to light duty and was harassed during this time. Appellant stated that he requested to see a union steward and was denied by Mr. Gale. Appellant stated that he used all his sick leave, his supervisor canceling his sick leave, even after he brought his doctor's statements. Appellant alleges that in February 1992, Mr. Gale refused to allow him to speak to a union steward after he had pulled a muscle. Appellant was sent home from work after he had returned to work with restrictions from his doctor. Appellant indicated that false statements were filed against him regarding his filing of a claim for injury on June 19, 1993 and he was forced to take leave without pay for five months. Once he returned to his modified job, things got worse. Appellant alleges he was followed to the rest room and break areas, had constant questioning upon his return from the rest room and break areas and was told he could not go to the rest room except on scheduled breaks. He states that he was hit with a forklift in 1995 and was turned into postal inspectors after reporting the accident. Appellant states that he was taken out of his modified job and forced to unload trucks. He argues that he is concerned for his safety, both inside and outside, while at work, as he heard shots fired while he was checking a truck. Lastly, appellant states that he was threatened with being fired and had the police called on him to be put out of the building for being in the break room.

In an attending physician's form CA-20, Dr. Daniel Metzger diagnosed lumbar radiculitis and stress disorder.

In a note dated June 28, 1996, Dr. Metzger opined that appellant was disabled from work due to stress-related conditions from his job.

In a statement dated June 28, 1996, Mr. Washington stated that when he got to the LIM belt appellant was not working, but sitting on a rail behind the LIM belt so he asked appellant if he needed a chair. Appellant replied no and said he was walking around because his back hurt. Mr. Washington told appellant to let his supervisor know what he is doing. Mr. Washington called Mr. Gale and advised him that appellant was sitting down at the LIM belt and that he needed to get appellant and take him back to his area as appellant was not working and was keeping the other employees from working.

In a letter dated September 11, 1996, Mr. Gale responded to appellant's allegations regarding the meeting with Mr. Butler and stated that Mr. Burns did not give an accurate version of events.

In a statement dated September 26, 1996, Mr. Gale replied to appellant's allegations. Mr. Gale stated that appellant's statement on February 1992 denying appellant's right to see a union steward is untrue. He stated that appellant had not been hit by a forklift in April 1995 and that all the witnesses supported that he was not hit by the forklift. Next, Mr. Gale states that appellant was not taken out of a modified job and appellant was sent home in February 1992 because of his doctor's restrictions and his failure to request light duty prior to returning to work. Regarding the shots and appellant's fear for his safety, Mr. Gale states that the postal inspectors along with the police investigated appellant's report of shots being fired. He also notes that appellant never indicated to his supervisor that he was fearful during his meeting on September 13, 1996. Lastly, Mr. Gale responds that appellant was on an unauthorized break, that he failed to follow a supervisor's instructions to go to the forman's office and that he was told to follow instructions or security would be called. According to Mr. Gale, appellant replied that he should call security. Appellant then went out on a stress claim without being disciplined.

In a statement dated September 30, 1996, Mr. Graylon Williams disputed appellant's details in his allegations. Mr. Williams stated that appellant lacked the necessary signatures or reason on his manager form.

By decision dated October 21, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the basis that he did not establish the fact of injury. The Office found that appellant's accepted factual events were noncompensable as they were an administrative function of the agency. The Office also found that his reaction to the unavailability of a modified job is not within the performance of duty and thus not compensable. The Office found that the allegations that Mr. Gale spoke to appellant in loud and vulgar way was not accepted as factual as Mr. Gale denied using vulgar or loud language. Appellant's allegation that he was denied union representation on June 9, 1996 after a confrontation in the break room is not supported by the evidence. Appellant's statement that he was not working in his area on May 19, 1995 because he was looking for Mr. Gale to approve leave is denied by Mr. Gale. The Office found that there was no evidence to support appellant's allegation that he was threatened with termination or harassment. The Office thus found that appellant had not established any compensable incident or occurrence and, thus, it was unnecessary to consider the medical evidence of record.

The Board finds that appellant has not established that he sustained an emotional condition due to factors of his federal employment.

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.¹ On the other hand, the disability is not covered where it results from such factors as an

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

employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

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.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that fact. 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.⁴

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment mishandled leave requests, his being placed on restricted sick leave, his supervisor requesting he get back to work on May 19, 1995, his supervisor advising appellant that he was not satisfied with his work habits the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, and do not fall within the coverage of the Act.⁵ Although the handling of leave requests, job application procedures, and similar matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷

Next, appellant alleges he was harassed by his supervisor. The Board has previously stated that the actions of an employee's supervisors which the employee characterizes as

² *Id.*

³ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

⁵ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁶ *Id.*

⁷ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

harassment may constitute factors of employment giving rise to coverage under the Act.⁸ An employee's allegation that he or she was harassed or discriminated against is not, however, 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 allegations with probative and reliable evidence.⁹

Appellant alleges that on June 12, 1996 his supervisor, Mr. Gale, spoke to him in a vulgar and loud voice while investigating an unauthorized break on June 9, 1996, which Mr. Gale denied. Appellant next alleges that Mr. Gale spoke to him in a loud and vulgar voice on May 19, 1995 and told him he would keep track of anything appellant said by the radio monitored C.C.R. Appellant also alleges that during this incident, the reason he was not in his work space was because he was looking for Mr. Gale to inform him that he had to leave to take care of his son's problems at school.

Mr. Gale denies using any vulgar or loud voice and that appellant did not mention that he had to go to his child's school until afterwards. He denies saying he did not key his radio to listen to appellant's conversations. Appellant also alleges that Mr. Gale restricted him from using the restroom until a break was called. Mr. Gale denies this and said that any employee may use the restroom at any time. Appellant also alleges that Mr. Williams, told him that Mr. Pouch, was going to initiate a disciplinary action for his unauthorized break on June 9, 1996. Mr. Williams denies making this statement. Appellant alleges that he was harassed after his July 11, 1993 back injury when the employing establishment canceled his sick leave and he found his doctor's statement in the trash. The employing establishment denies this allegation and states appellant's sick leave was canceled because he failed to give updated medical documentation to support his request. The employing establishment also denied that appellant's medical documentation had been placed in the trash.

While appellant has made allegations of harassment by his supervisors, he has not provided sufficient evidence to support any specific incident. In addition, appellant's supervisor and the employing establishment deny his allegations. As appellant has not submitted substantive and probative evidence in support of his allegations of harassment, he has not met his burden of proof in this regard.

As to appellant's allegation regarding his dissatisfaction with his work assignment on one occasion, the Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated, in that it resulted from his frustration in not being permitted to work in a particular environment or to hold a particular position.¹⁰

The Office properly denied appellant's claim as appellant did not allege and establish with supporting evidence a compensable factor of employment in this case.

⁸ *Goldie K. Behymer*, 45 ECAB 508 (1994).

⁹ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁰ *Tanya A. Gaines*, 44 ECAB 934-35 (1993).

The decision of the Office of Workers' Compensation Programs dated October 21, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 4, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member