U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID N. SHAFFER and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

Docket No. 97-2052; Submitted on the Record;
Issued October 8, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On January 23, 1995 appellant, then a 54-year-old city carrier, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to harassment by his supervisors regarding a prostate condition and a back condition. He stated that his work restrictions included using a push cart limited to 50 pounds of weight while delivering mail but his supervisors asked him to carry mail which exceeded 50 pounds and that he was also told to carry flats of magazines on his arms at one time so that he could carry more mail in his cart.[1] Appellant also stated that he had to urinate frequently because of his prostate condition and the employing establishment required him to use an elementary school restroom rather than public restrooms. He also alleged that he was harassed by the employing establishment because they frequently gave him instructions on how to deliver the mail on his route.

In a statement dated April 13, 1994, appellant noted that the public restroom that he used was located approximately one mile from his route and that the elementary school restroom that the employing establishment asked him to use was up two flights of stairs and use of the school restroom saved only five minutes a day over the public restroom.

In a letter dated October 11, 1991, Dr. Teresa M. Mogielnicki, a Board-certified family practitioner, stated that appellant had been evaluated regarding his voiding habits and that an examination revealed that his urinalysis was normal and that his history of voiding every two hours while drinking increased amounts of water due to working in hot temperatures was perfectly normal.

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[1] The record contains a memorandum from appellant's supervisor, Jeff Alexander, dated February 17, 1994 instructing him to carry flats of mail on his arms, along with other instructions.

In a memorandum dated April 11, 1994, an employing establishment representative related that appellant was being accommodated due to his degenerative arthritis condition by being allowed to use a cart to deliver mail and that documentation revealed that he had a nonindustrial condition related to his prostate gland and the employing establishment was in the process of determining whether it could reasonably accommodate this condition.

A May 26, 1994 memorandum regarding appellant's grievance concerning the instruction that he carry mail flats on his arm, indicated that this instruction had been withdrawn.

In a certificate dated June 2, 1994, Dr. Michael Laskar, a family practitioner, stated that appellant should not be forced to push a cart greater than 50 pounds due to a back condition.

In a written statement dated August 7, 1994, Betty Cameron, a shop steward, related that she had noticed a change in appellant's personality during the past year and felt that this was due to stress at work. She related that management felt that appellant's use of the restroom was excessive and they requested medical documentation which appellant provided. Ms. Cameron stated that she felt management was harassing appellant in regard to his need to urinate frequently. She also noted that appellant had a back condition which required the use of a push cart on his route and increased the amount of time it took him to make deliveries because he could no longer take shortcuts across yards and had to use the sidewalk. Ms. Cameron stated that management harassed appellant about the amount of overtime he requested in order to complete his deliveries. She related that appellant requested a special route examination to determine how much time it took him to deliver the mail and that the harassment then increased. Ms. Cameron related that appellant was embarrassed because the entire office knew of his medical problems and she stated that appellant was a conscientious worker and was not deserving of the treatment he received from management.

In a statement dated August 13, 1994, a coworker stated that she had spoken to appellant's relief carrier who confirmed that appellant's route was long and had a heavy mail volume with some swings on the route weighing more than 50 pounds.

In a narrative report dated December 18, 1994, Dr. Alexander C. Green, a Board-certified psychiatrist and neurologist of professorial rank, provided a history of appellant's condition, a summary of the medical records and the results of a mental status examination. He diagnosed depression and an adjustment disorder. Dr. Green related that in 1989 appellant was diagnosed with a prostate condition and needed to urinate frequently which caused problems at work until he received medical documentation from his physician. He related that in 1991 appellant's route was inspected and management complained of excessive restroom stops until appellant obtained a note from his physician. Dr. Green related that in 1992 appellant sustained an industrial back injury and needed to carry mail in a cart but his supervisor had difficulty accepting the medical restrictions and appellant had to file several grievances. He related that appellant felt he was being harassed regarding his medical conditions. Dr. Green stated by 1994 appellant had developed symptoms of a severe clinical major depression. He stated his opinion that the condition was caused by his harassment and conflict at work and caused disability from June 1994 to January 1995.

In a letter dated December 24, 1994, Dr. Richard J. Conner, an urologist, stated that appellant had a prostate disorder that caused frequent urination.

In a letter dated February 22, 1995, Sigrid K. Alexander stated that in early 1994 appellant requested a special route inspection, feeling that his route was overburdened and that his back and prostate conditions caused him to take longer to deliver the mail. She stated that a special route inspection showed that appellant's total daily time was 8 hours and 41 minutes. Ms. Alexander stated that appellant used a public restroom at a state park rather than a restroom on his route and this deviation took an average of 11 minutes per round trip. She related that appellant contended that the examination time was incorrect even though he personally counted his mail volume and made his own clock rings. Ms. Alexander noted that appellant had rearranged his route without authorization prior to the inspection to include 18 parking spots for only 284 deliveries which was an excessive amount of moves and she felt this was unreasonable because appellant had a push cart that could hold more mail than a carrier satchel. She related that appellant had recently returned to work with a new medical limitation of a 50-pound limit to the cart. Ms. Alexander noted that after the special route inspection the parking spots were reduced from 18 to 4 which reduced the number of times he had to lift the cart by 36 times per day and it was felt that this helped his back condition as well as increased his efficiency on the route. She noted that she had requested twice that appellant provide documentation of his prostate problem and he stated that there was no documentation because his doctors could not find anything wrong with his prostate gland but were still trying to find why he had to urinate so frequently. Ms. Alexander stated that appellant was instructed to use the elementary school faculty men's restroom on his route which would shorten his street time but that appellant wished to use the a public restroom which was out of his route. She stated that following a second inspection it was discovered that appellant was delivering his route out of sequence and parking at unauthorized park spots and became insubordinate when he was questioned about this. Ms. Alexander denied she had ever been unprofessional and unfair when dealing with appellant.

In a letter dated February 22, 1995, another of appellant's supervisors Jeff Alexander stated that when he conducted a route inspection with appellant he asked him why he did not use the faculty restroom at the elementary school and that he stated that he did not want to be accused of any sexual impropriety with any children at the school and that he told appellant that he had never heard of appellant being accused of such a problem and that many carriers used the schools for comfort stops. Mr. Alexander stated that the elementary school principal told him that carriers were welcome to use the faculty men's restroom and that he then told appellant that he should use that restroom rather than driving off his route 10 to 12 minutes each way to use the public park restroom and that this would also save overtime. He stated that appellant was not happy with this decision as he was used to having overtime. Mr. Alexander stated that he did not feel the employing establishment or his supervisors had contributed to appellant's stress.

In a letter dated March 6, 1995, Ann Moore, a union representative, related that Mr. Alexander and Ms. Alexander were married and Ms. Alexander had succeeded her husband as supervisor in February 1994. She questioned whether Ms. Alexander could be objective since her husband had negative views regarding appellant. Ms. Moore stated that several employees had filed grievances against Mr. Alexander who seemed to feel that injured employees were poor performers. She stated that Mr. Alexander had tried to force appellant to work outside of his

medical limitations by placing more weight in his cart than his physician recommended. Ms. Moore stated that Mr. Alexander's sole purpose in changing the location of where appellant parked his postal vehicle and where he was to use the restroom was to avoid having to adjust his overburdened route. She noted that the school restroom which appellant had been instructed to use was closed on Saturdays and during school holidays and that appellant stated that it did not take any longer to use the restroom at the park rather than at the school. Ms. Moore stated that the carrier who delivered on appellant's route from July 1994 to January 1995 while appellant was off work was never told to use the school restroom and that no other carrier was instructed as to where to take a restroom stop. She denied that appellant's motivation in the way he performed his deliveries was to get overtime pay. Ms. Moore related appellant's statement that using the park restroom took approximately 2 minutes each way, not the 11 minutes as stated by Ms. Alexander. Ms. Moore stated that appellant had provided medical documentation substantiating an enlarged prostate. She stated that appellant occasionally parked his vehicle in additional parking spots in order to divide the mail to keep to his limitation of not pushing over 50 pounds in his cart and that management constantly harassed him about this.

In a report dated August 17, 1995, Dr. Conner stated that appellant had been his patient since July 1994 and had benign prostatic hyperplasia, a common condition which generally affected men by causing an increased frequency of urination.

In a letter received by the Office of Workers' Compensation Programs on January 24, 1996, Ms. Alexander denied that appellant was asked to bring medical documentation regarding his conditions in order to harass him. She denied that other carriers were not told where to use bathroom facilities and stated that any time a carrier was observed using inefficient work habits they were instructed in the correct procedure.

By decision dated February 27, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that his condition was causally related to factors of his employment.

By letter dated March 20, 1996, appellant requested an oral hearing before an Office hearing representative.

In an employing establishment Step 2 Grievance Decision regarding appellant's allegation that the employing establishment violated the union contract by instructing him where to take his comfort stop, a labor relations specialist indicated that it had been mutually agreed that appellant would "utilize his comfort stop as needed."

On February 4, 1997 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated April 7, 1997, the Office hearing representative affirmed the Office's February 27, 1996 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his 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.[2] 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 from not being permitted to work in a particular environment or to hold a particular position.[3]

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 employment factors.[4] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[5]

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.[6] 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.[7]

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.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. To the extent that the disputes and incidents alleged as constituting harassment and discrimination by supervisors and

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[5] *Effie O. Morris*, 44 ECAB 470, 473 (1993).

[6] *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

[7] *Id.*

coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[8] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[9]

In the present case, appellant alleged that his supervisors harassed him regarding the fact that he needed to use a mail cart to deliver the mail because of a back condition and because he had a condition which caused him to urinate frequently and thus require additional restroom stops. He also alleged that they harassed him by requiring that he use a school restroom rather than a public restroom which was not on his route, asked him to carry flats on his arm and gave him other instructions on how to deliver the mail. The employing establishment denied that appellant was subjected to harassment or discrimination in these matters. Regarding the urinary condition, his supervisors stated that appellant was asked to provide adequate medical documentation to support his need for frequent restroom stops. They denied that they harassed appellant regarding this matter. Although appellant filed a grievance regarding the instruction that he use a school restroom on his route and the record shows that the grievance was resolved through an agreement that appellant could "utilize his comfort stop as needed," there is insufficient evidence of harassment or error regarding this matter. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[10] Regarding the instruction that appellant carry flats on his arm, the record shows that the instruction to carry flats on his arm was withdrawn and there is insufficient evidence of harassment or discrimination regarding this instruction. Appellant's supervisors indicated that they gave appellant instructions in how to deliver his route for the purpose of improving or maintaining efficiency in delivery. Ms. Cameron and Ms. Moore indicated their beliefs that appellant was harassed by the employing establishment concerning his back and urinary condition but provided insufficient details or other documentation to establish that appellant was harassed or discriminated against by his supervisors. Thus, appellant has not established a compensable employment factor under the Act in this respect.[11]

Regarding, appellant's allegation that he was required to carry more than 50 pounds in his cart which violated his medical restriction, the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.[12] However, his supervisors denied that he was asked to violate such a restriction and appellant has provided insufficient evidence in support of this allegation. Although a coworker stated that appellant's route had swings which included mail

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

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

[10] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[11] *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).

[12] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

weighing more than 50 pounds, there is insufficient evidence that appellant carried more than 50 pounds in his cart. He himself stated that he would adjust the amount of mail he carried in his cart so as to keep to the 50-pound limitation. Therefore, he has not established a compensable employment factor in this regard.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[13]

The April 7, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
October 8, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[13] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).