U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSIE BELCHER and U.S. POSTAL SERVICE,
POST OFFICE, Trotwood, OH

Docket No. 97-2693; Submitted on the Record;
Issued October 14, 1999

DECISION and ORDER

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

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an emotional or a physical condition causally related to compensable factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

On December 13, 1996 appellant, then a 42-year-old letter carrier, filed a claim for an occupational disease (Form CA-2) alleging that on November 20, 1996 he first realized that his hypertension and coronary heart disease were employment related. Appellant stated that he tore his Achilles tendon on February 10, 1996 and was placed on medical restrictions.[1] He further stated that the employing establishment failed to adhere to his medical restrictions which caused undue stress to his heart. Appellant stopped work on November 20, 1996.

Appellant's claim was accompanied by his December 3, 1996 narrative statement revealing that on November 20, 1996 he experienced chest pains and shortness of breath due to stress from management. He stated that his supervisor was asked to call the rescue squad to transport him to the hospital and that it was determined that he had symptoms of a heart attack. Appellant further stated that he was hospitalized and had to undergo a stress test. He indicated that he was able to return to work on December 4, 1996. Appellant's claim was accompanied by a November 20, 1996 hospital report from Dr. Alaa Abou Saif revealing appellant's treatment for his chest pain, hypertension and cholesterol. Appellant submitted a December 3, 1996 disability certificate from Dr. Thomas G. Thornton, a Board-certified internist, indicating that he was totally disabled during the period November 20 through December 4, 1996 and that he was able to return to work on December 4, 1996 with restrictions. Additionally, appellant submitted the employing establishment's December 19, 1996 letter controverting his claim.

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[1] Appellant filed a claim assigned number A9-412444 for a foot injury sustained on February 10, 1996. The Office accepted appellant's claim for a torn Achilles tendon.

By letter dated January 8, 1997, the Office advised the employing establishment to submit additional factual evidence. By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office then advised appellant to submit additional factual evidence regarding his physical and emotional conditions.

In response to the Office's January 8, 1997 letter, appellant submitted a January 16, 1997 letter indicating that he sustained a 10 percent loss of kidney function due to the denial of his request for leave to seek medical attention by Joe Ricketts, appellant's supervisor. Appellant stated that he underwent angioplasty surgery after sustaining a back injury on March 15, 1995 while delivering mail on his route. He requested compensation for time lost between November 20 and December 3, 1996, and a change in job requirements due to his torn Achilles tendon sustained on February 10, 1996. Appellant also requested that he receive medical retirement if there was no agreement on the above requests.

Appellant's letter was accompanied by a June 15, 1995 letter requesting that the employing establishment transfer him from the position of letter carrier to the position of mailhandler due to his March 15, 1995 heart attack and subsequent surgery. Appellant submitted a November 2, 1995 letter from Trellis Grubbs, an employing establishment manager, denying his request for a transfer based on a review of appellant's attendance record. Mr. Grubbs stated that only those who received a very good or outstanding rating were considered for a transfer and that appellant received a good rating.

Appellant's letter was also accompanied by several of his narrative statements. In his January 9, 1996 narrative statement, appellant alleged that Mr. Ricketts exhibited unprofessional behavior towards employees and that Mr. Ricketts' denial of his January 2, 1996 request for leave under the Family Medical Leave Act (FMLA) to visit his critically ill father caused his blood pressure to rise. Appellant submitted an October 17, 1996 narrative statement indicating that on October 10, 1996 he was in the restroom where he saw Mr. Ricketts with a hand-held tape recorder. Appellant stated that, after he left the restroom, he informed everyone to be very careful about what they said around Mr. Ricketts because he was probably taping their conversation. He then stated that this was an invasion of privacy and that "[t]ruly B[ig] B[rother] [is] [watching]!!" In a November 1996 narrative statement, appellant alleged that Mr. Ricketts threatened him in saying to his union steward that he was going to get him anyway he could because he caught Mr. Ricketts in several lies. Appellant stated that this was a threat to his career and livelihood, and a vendetta against him for filing a claim for loss wages. In a December 3, 1996 statement, appellant provided that he experienced chest pains due to stress from management on November 20, 1996, that he was hospitalized and he underwent a stress test. In his December 19, 1996 narrative statement, appellant alleged that when he attempted to explain why he returned one-half hour late from his route on that date, Mr. Ricketts stated that he did not want to hear his "garbage." Appellant stated in his January 8, 1997 narrative statement that on December 5, 1996 he had a conversation with Michael Kennedy, an employing establishment employee, regarding the status of his heart condition. He further stated that the conversation took a sour turn because Mr. Kennedy made comments that his condition may be recurring, that Mr. Kennedy stated that he should watch what he said and Mr. Kennedy suggested that he should retire on disability. Appellant also stated that the conversation turned sour because Mr. Kennedy defended Mr. Ricketts' behavior. He alleged in his January 16, 1997

narrative statement that he was harassed by Mr. Ricketts during a telephone call regarding the permission he received from Eric Craig, a union assistant, to leave work after slipping on a step while delivering mail on his route. Appellant stated that he told Mr. Ricketts that he followed the same procedure last year and that he was not required to go to medical at that time. He reiterated his allegation regarding Mr. Ricketts' comment that he did not want to hear his "garbage" when he tried to explain his late return from his route. In a January 27, 1997 narrative statement, appellant contended that, for the second time, he found a small parcel wedged under the seat in his jeep and that he notified, Doris, an employing establishment employee. Appellant also contended that in response to telling Mr. Ricketts that his jeep stalled, Mr. Ricketts stated he was not a mechanic and told him what he should have done to start his jeep. He then stated that the next day he took the same jeep, and that the engine was racing and the brakes were not working.

Dr. Thorton's December 5, 1995 medical report revealed that appellant had an inferior myocardial infarction in March 1995 and appellant's subsequent medical treatment. Dr. Thornton opined that appellant was able to carry mail for approximately four to five hours per day and that any undue stress at work could lead to an increase in blood pressure and could in time lead to the worsening of his heart problem. He further opined that appellant was very willing to work and that he could handle an active job, but that he should not be pushed beyond his limits. A March 12, 1996 disability certificate of Dr. Gerald J. Broock, a Board-certified orthopedic surgeon, provided that appellant was under his care and that appellant could work with restrictions during the period March 12 through May 14, 1996. In his September 25, 1996 medical report, Dr. Thornton indicated his findings regarding appellant's Achilles tendon rupture, blood pressure and cardiopulmonary examination. Dr. Thornton noted that appellant had difficulty with walking his mail route due to his orthopedic problems and opined that appellant should do another type of job such as, custodial work or drive a car on his mail route. He then opined that this would be reasonable in light of appellant's hypertension, orthopedic and cardiac problems. In his October 18, 1996 disability certificate, Dr. Broock provided that appellant was partially incapacitated during the period October 21 through November 19, 1996 and that appellant could continue to work with restrictions. Dr. Broock's November 19, 1996 medical report and his December 17, 1996 treatment notes indicated his findings regarding appellant's left Achilles tendon and medical treatment. A November 20, 1996 hospital emergency room report revealed appellant's complaints of chest pain and medical treatment. Appellant resubmitted Dr. Thornton's December 3, 1996 disability certificate. In a February 11, 1997 medical report, Dr. Thornton indicated that appellant had coronary artery disease and that appellant was doing reasonably well. Dr. Thornton stated that functional testing in the form of a treadmill or intravenous persantine stress indicated that appellant still had some ischemic changes in the inferior wall of the heart. He further stated that appellant could function well enough to perform reasonable physical activities, but that he should not be asked to perform excessive physical activities for longer than a regular work week such as, 40 hours per week. Dr. Thornton suggested that appellant should be given a job where he could deliver the mail in a motor vehicle or avoid excessive walking. He concluded that appellant should be given a less stressful job if it were available. Appellant submitted letters of commendation from employing establishment managers, Pat Brown and Michael S. Kennedy. Appellant also submitted correspondence regarding his claim for a February 10, 1996 employment injury.

By decision dated February 28, 1997, the Office found the evidence of record insufficient to establish that appellant sustained an occupational injury as alleged. In an accompanying memorandum, the Office found the factual evidence of record insufficient to establish that appellant was exposed to deleterious job stressors at the time, place or in the manner alleged. The Office also found the medical evidence of record insufficient to establish that appellant sustained a condition caused or contributed to by factors of his employment.

By letter dated March 28, 1997, appellant submitted documents regarding grievances filed by employing establishment employees and a customer against Mr. Ricketts and narrative statements from employing establishment employees regarding treatment they received from Mr. Ricketts. Appellant also submitted grievances he filed against Mr. Ricketts regarding the October 10, 1996 incident and the employing establishment's February 19, 1997 decision finding the use of sound recording devices without the expressed consent of all the parties was prohibited, a loud discussion he had with Mr. Kennedy on December 5, 1996 concerning his conversation with Mr. Ricketts and the employing establishment's January 8, 1997 decision indicating that the grievance was resolved at step 1A, being watched by Mr. Ricketts while he was on his route on October 10, 1996, and Mr. Ricketts' racial slur made towards him on October 4, 1996. Appellant submitted Mr. Ricketts' response denying that he directed a racial slur towards him. Appellant resubmitted Dr. Thornton's February 11, 1997 medical report. He also submitted a March 20, 1997 medical report of Dr. Sukhdev H. Khurma, a Board-certified internist, revealing that he had coronary artery disease and reversible ischemia on his thallium scan. Dr. Khurma provided appellant's physical restrictions and stated that he agreed with Dr. Thornton's recommendations.

In a March 31, 1997 response letter, the Office advised appellant to exercise his appeal rights.

Appellant submitted an April 15, 1997 letter requesting reconsideration of the Office's February 28, 1997 decision. He submitted a March 14, 1995 medical report of Dr. John M. Rich, a Board-certified internist, revealing that appellant was referred to him by Dr. Khurma due to an abnormal treadmill study. Dr. Rich indicated appellant's medical history, his findings on physical examination, a diagnosis of probable arteriosclerotic heart disease with old silent inferior myocardial infarction with probable angina and medical treatment. Further, appellant submitted Dr. Thornton's March 17, 1995 medical report revealing his medical history, his findings on physical and objective examination, and surgical procedures, a diagnosis of artherosclerotic heart disease and hypertension, and appellant's future medical treatment. Dr. Thornton's April 19, 1995 medical report to Dr. Khurma indicated that appellant seemed to be doing well from a cardiovascular standpoint. In his May 16, 1995 medical report to Dr. Khurma, Dr. Thornton reiterated that appellant was doing well and indicated that appellant was going to see him concerning his elevated blood pressure. In an October 4, 1995 medical report to Dr. Khurma, Dr. Thornton indicated his findings on objective examination and medical treatment. Dr. Rich's March 14, 1996 medical report to Dr. Khurma revealed his findings based on a treadmill examination and appellant's refusal to undergo a catheterization. In a March 26, 1996 medical report to Dr. Khurma, Dr. Thornton reiterated that appellant was doing well from a cardiovascular standpoint. Appellant submitted his November 25, 1996 stress test results from Dr. Stephen Schreck, a Board-certified internist, and a cardiac scan of the same date from

Dr. Jose Quinones, a Board-certified internist. Appellant resubmitted Dr. Thornton's December 5, 1995, September 25, 1996 and February 11, 1997 medical reports.

In a July 3, 1997 decision, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was of an immaterial and a repetitious nature, and thus, insufficient to warrant a review of the prior decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional or a physical injury causally related to compensable factors of his federal employment.

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 factors of his federal employment.[2] To establish his claim that he sustained an emotional or physical condition in the performance of duty, appellant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the diagnosed condition.[3] 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant.[4]

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[5]

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

[3] *Ruby I. Fish*, 46 ECAB 276 (1994); *Mary A. Sisneros*, 46 ECAB 155 (1994).

[4] *Id.*

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

Appellant has alleged that he was required to work outside his physical restrictions by the employing establishment. Work outside of physical limitations may constitute a compensable factor of employment if substantiated by the record.[6] As indicated by the employing establishment's December 19, 1996 letter controverting appellant's claim, appellant has failed to submit any supportive evidence establishing that he was required to work outside his physical limitations. Rather, appellant merely made a general allegation without providing specific details about the duties that he was required to perform by the employing establishment that were not within his physical limitations. This alleged compensable factor of employment, therefore, is not established as factual.

Regarding appellant's allegation of a pattern of harassment by Mr. Ricketts and the employing establishment, the Board has held that a claim based on harassment or discrimination may be compensable if there is probative evidence that harassment or discrimination did, in fact, occur.[7] The evidence of record does not establish a claim based on harassment in this case. Specifically, appellant has alleged that Mr. Ricketts harassed himself as well as other employing establishment employees. Appellant submitted narrative statements from these employees in support of his contention that they were harassed by Mr. Ricketts. Appellant, however, failed to submit any evidence to support his contention that he was harassed by Mr. Ricketts and the employing establishment. Therefore, this alleged compensable factor of employment is not established as factual.

Appellant has alleged that the employing establishment's denial of his request for a transfer and denial of leave under the FMLA caused him stress. It is well established that matters such as job transfers or assignments,[8] and matters involving the use and denial of leave[9] are administrative functions of the employer and do not relate directly to the day-to-day or specially assigned duties of the employee. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.[10] In denying appellant's request for a transfer, Mr. Grubbs, an employing establishment manager, indicated that appellant's attendance rating did not meet the necessary criteria to be considered for a transfer. There is no evidence of record establishing that the employing establishment erred or acted abusively in denying appellant's request for leave under the FMLA. The Board finds that, since there is no evidence of record establishing that the employing establishment erred or acted abusively in handling the above matters, appellant has failed to establish a compensable employment factor under the Act.

As appellant has failed to establish any compensable factors of employment and implicate them in the development of his conditions, he has failed to prove that he sustained emotional or physical injuries in the performance of duty as alleged. Consequently, the medical

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

[7] *Mary A. Sisneros*, *supra* note 3; *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

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

[9] *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

[10] *Id.*

evidence of record that was before the Office at the time of its February 28, 1997 decision need not be addressed.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under section 8128(a).

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[11] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without review of the merits of the claim.[12]

In support of his request for reconsideration, appellant submitted grievances filed by himself and other employing establishment employees against Mr. Ricketts and the employing establishment. He also submitted complaints filed by employing establishment customers against Mr. Ricketts. The filing of grievances is not related to an employee's regular or specially assigned duties such that it could be considered as arising in the performance of duty.[13] Regarding appellant's grievances against Mr. Ricketts and the employing establishment, the record does not indicate that they committed error or abuse in handling these matters. Specifically, regarding appellant's allegation that Mr. Ricketts was planning to tape conversations with employees, the employing establishment merely found that the use of sound recording devices without the expressed consent of all the parties was prohibited. The employing establishment did not determine that Mr. Ricketts had actually taped a conversation with an employee. Appellant's grievance concerning his loud discussion with Mr. Kennedy was resolved at step 1A, but without a finding of fault on the part of Mr. Kennedy. There is no evidence of record establishing that Mr. Ricketts committed error or abuse in watching appellant perform his work duties. Mr. Ricketts denied appellant's allegation that he directed a racial slur towards him on October 4, 1996. Therefore, appellant has failed to establish a compensable employment factor under the Act.

The grievances filed by employing establishment employees and customers against Mr. Ricketts do not involve appellant's assigned work duties. Thus, they do not constitute a compensable employment factor.

In further support of his request for reconsideration, appellant submitted new medical evidence from Drs. Rich, Thornton, Schreck and Quinones as well as medical evidence from Dr. Thornton that was previously of record. None of the new medical evidence established that appellant's emotional and heart conditions were causally related to a compensable employment

[11] 20 C.F.R. § 10.138(b)(1).

[12] 20 C.F.R. § 10.138(b)(2).

[13] *George A. Ross*, 43 ECAB 346 (1991).

factor. Further, the Board has held that evidence which repeats or duplicates evidence already in the record has no evidentiary value and does not constitute a basis for reopening a case.[14]

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office, the Board finds that the Office was not required to review the merits of appellant's claim.[15]

The July 3 and February 28, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
October 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[14] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[15] *Nora Favors*, 43 ECAB 403 (1992).