U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT W. JOHNS and U.S. POSTAL SERVICE,
POST OFFICE, Waycross, GA

Docket No. 98-74; Submitted on the Record;
Issued October 15, 1999

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition while in the performance of duty.

On March 8, 1995 appellant, then a 45-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained an emotional condition while in the performance of duty. He ceased working that same day. Appellant identified June 6, 1994 as the date he first realized that his illness was caused or aggravated by his employment. On that particular date, appellant requested that the employing establishment permanently assign him the auxiliary mail route he had been working for the previous eight months in a limited-duty capacity. Appellant further requested that the permanent assignment be reduced to writing.[1] When his request was not immediately acted upon, appellant explained that he experienced mental stress due to the uncertainty of his duty status. He further explained that he felt he was not measuring up to his peers' standards. In support of his claim, appellant submitted a March 21, 1995 report from Dr. Abdellatif M. Desouky, a psychiatrist and a March 31, 1995 report from Dr. Marc W. Eaton, a psychologist. Both individuals diagnosed appellant as suffering from major depression.

In an April 1995 supplemental statement, appellant described a number of employment-related incidents that occurred over an approximate four-year period that allegedly contributed to his emotional condition. In addition to reiterating his prior allegations, appellant alleged that after his initial employment injury in January 1992, he was forced to return to work too soon and was repeatedly denied the necessary time to recover from his injuries. He also described at least

[1] Appellant sustained an employment-related right ankle injury on January 8, 1992. His injury required arthroscopic surgery, which was performed in August 1993. Upon returning to work in a limited-duty capacity on October 12, 1993, appellant was reassigned from his regular route to an auxiliary route, which was primarily a curbside route that normally required less than eight hours to complete. Appellant, however, was allowed eight hours within which to complete his work on the auxiliary route. While appellant received a written description for a "modified" letter carrier position, which his treating physician approved, the position description did not specifically identify the mail route appellant was expected to work. Appellant worked his assigned auxiliary route for approximately 17 months prior to filing his claim in March 1995.

two instances, in which his immediate supervisor allegedly denied him sick leave and continuation of pay. Appellant further explained that the limited-duty assignments he received prior to October 1993 did not provide sufficient work to cover an eight-hour day and that his efforts to find additional work to round out his day added to his depression. With respect to his limited-duty status after October 1993, appellant explained that the postmaster's public complaints about his performance and threats to reassign him added to his emotional stress. Additionally, appellant described incidents of harassment from both coworkers and management regarding his duty status and job performance. Furthermore, appellant alleged that management had discussed his job performance and duty status with coworkers in violation of his privacy rights. Finally, appellant described an incident in which management allegedly violated his rights by refusing to accept a grievance filed on his behalf.

The employing establishment submitted statements from appellant's immediate supervisor and the postmaster, both of which refuted the majority of appellant's allegations. In a statement dated April 25, 1995, appellant's immediate supervisor, Jennine R. Bennett, denied ever having refused a request for sick leave and she explained that she lacked the authority to deny a request for continuation of pay. With respect to her alleged refusal to accept a grievance filed on appellant's behalf, appellant's supervisor explained that the proposed filing was procedurally flawed and that the union acknowledged the problems and agreed to correct them and resubmit the grievance the following day. Appellant's supervisor further stated that appellant was never required to work outside the physical limitations imposed by his physician and that the employment establishment made every effort to accommodate his medical limitations. She did, however, acknowledge that one particular coworker continually expressed dissatisfaction with the assignment of various mail routes to limited-duty status employees.

The postmaster, O.M. Lee, in a statement dated April 26, 1995, indicated that appellant was productive in all assignments and that there were never any confrontations or misunderstandings between him and appellant. Additionally, Mr. Lee denied ever having discussed appellant's job performance with any of his coworkers or having made any disparaging remarks about appellant. He further indicated that appellant's performance on his auxiliary route was never considered a problem and that he never told appellant that he was going to be removed from that particular route.

The record also includes statements from former union officials Ray Roundtree, Michael F. Morris and B.D. Grantham, as well as a statement from William R. McCray, one of appellant's coworkers. These statements generally corroborate appellant's assertion that he was permitted to work an auxiliary route upon returning to light-duty status in October 1993, but that the specific route assignment was never formally reduced to writing. Additionally, the statements from Mr. Morris and Mr. Grantham detail the various efforts made on appellant's behalf to secure a permanent assignment. These statements, as well as Mr. McCray's statement, also corroborate appellant's assertion that at least one other coworker repeatedly expressed interest in being assigned to either appellant's current auxiliary route or his former route. Finally, Mr. Grantham's statement corroborates the postmaster's April 25, 1995 statement regarding appellant's performance inasmuch as Mr. Grantham indicated that "Mr. Lee … stated many times that [appellant] was a very good employee and had always performed on an acceptable level."

Appellant provided the Office of Workers' Compensation Programs additional factual information on June 16, 1995. Although most of the information provided was already on record, appellant made additional allegations of harassment on the part of his immediate supervisor. Appellant indicated that on one occasion Ms. Bennett stated that she would put him back on his initial route. He also alleged that Ms. Bennett harassed him on two other occasions by placing notes at his workstation inquiring about his performance on the auxiliary route. Appellant also noted that he was involved in a motor vehicle accident on February 27, 1995, which he attributed to his employment circumstances.[2]

In a statement dated July 11, 1995, Ms. Bennett indicated that the alleged incidents of harassment were merely her efforts to monitor the productivity of the carriers under her supervision and to provide necessary feedback. With respect to her alleged threat to return appellant to his prior route, Ms. Bennett explained that appellant's account of their conversation was incorrect and that she was merely inquiring about how appellant was doing and what were his physically capabilities.

By decision dated April 4, 1996, the Office denied appellant's claim on the basis that appellant failed to establish that his injury occurred in the performance of duty. In an accompanying memorandum, the Office explained that appellant failed to implicate or substantiate any compensable employment factors.

On April 22, 1996 appellant requested an oral hearing. Although appellant did not attend the June 24, 1997 hearing, Charles Windham of the National Association of Letter Carriers appeared on appellant's behalf. Subsequent to the hearing, appellant submitted a report from Dr. John F. Michaels, a Board-certified psychiatrist and neurologist, who examined appellant in July 1997 and diagnosed major depression. Appellant also submitted the minutes from various union meetings that occurred during the period March 1992 through October 1995. Finally, appellant submitted another statement dated August 5, 1997, which essentially reiterated the previously described incidents and events that contributed to his emotional condition.[3]

In a decision dated September 3, 1997, the Office hearing representative denied appellant's claim on the basis that he failed to demonstrate that he sustained an emotional condition in the performance of duty. The hearing representative explained that appellant failed

[2] Appellant explained that he rear ended another motorist because he was thinking about a conversation he had with the postmaster earlier that day, wherein he allegedly requested that appellant meet with him outside the presence of the union to discuss appellant's current employment situation. In response, Mr. Lee denied ever having requested to meet with appellant without the union present. He also expressed the opinion that it was utterly ridiculous for appellant to suggest that this alleged conversation was the cause of his motor vehicle accident.

[3] Appellant concluded his statement by identifying the following types of "wrongful treatment" he received in connection with his employment: (1) When he initially injured his ankle, appellant was treated differently than another injured coworker who, unlike him, was granted sick leave and continuation of pay and was not subjected to derogatory remarks; (2) appellant was occasionally required to work overtime, which exceeded his doctor's limitation of an eight-hour workday; (3) the employing establishment repeatedly denied appellant a written description for a limited-duty assignment; (4) appellant was subjected to public castigation for poor work performance; (5) the employing establishment violated appellant's privacy by discussing his job performance with other coworkers; and (6) the employing establishment failed to take assertive action to resolve concerns about work assignments for limited-duty employees, thereby subjecting appellant to unnecessary animosity from coworkers.

to implicate a compensable employment factor as a cause for his condition. Accordingly, the hearing representative affirmed the Office's April 4, 1996 decision.

The Board finds that appellant has failed to establish that he sustained an emotional condition while in the performance of duty.

To establish that he has sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.[4]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[5] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[6]

Appellant alleged that his emotional condition resulted, in part, from the postmaster's failure to permanently assign him the auxiliary route he had worked on a regular basis since returning to light-duty status on October 12, 1993. The assignment of work is an administrative function and, as a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.[7] However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in assigning appellant a work schedule or a particular tour of duty, such administrative action will be considered a compensable employment factor.[8]

[4] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

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

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

[7] *Janet I. Jones*, 47 ECAB 345, 347 (1996).

[8] *Hellen P. Allen*, 47 ECAB 141, 146 (1995).

Appellant argued that upon his return to light-duty status he was entitled to a written job description pursuant to 20 C.F.R. § 10.123(c),[9] which he allegedly did not receive. To the contrary, the record includes three "modified" letter carrier position descriptions that the employing establishment provided appellant regarding his return to light-duty status on October 12, 1993. While these position descriptions do not specifically identify the auxiliary mail route appellant worked, they nonetheless sufficiently comply with the requirements under section 10.123(c)(2). As required, the employing establishment advised appellant, in writing, of the availability of limited-duty work that complied with the physical restrictions outlined by appellant's physician. Moreover, appellant performed these duties without interruption for approximately 17 months prior to the filing of his claim in March 1995 and he continued to perform the duties thereafter.[10] Appellant's belief that he is entitled under the regulations to a permanent assignment with a specifically identified mail route is unfounded. In the instant case, the record does not disclose any error or abuse on the part of the employing establishment in providing appellant with a written work assignment. Consequently, the employing establishment's actions in this regard are not compensable.

Appellant also alleged that he was required to occasionally work overtime, which exceeded the eight-hour per day work restriction imposed by his physician. Appellant does not otherwise allege that his assigned duties as a "modified" letter carrier required him to exceed the physical limitations imposed by his physician. If substantiated, appellant's allegation that he was required to perform work outside of his physical restrictions would constitute a compensable employment factor.[11] Ms. Bennett, appellant's supervisor, indicated that he worked an average of eight hours and seven minutes per day since returning to limited-duty status on October 12, 1993. She further stated that appellant was never "forced to work" outside the physical limitations imposed by his physician and that the employing establishment made every effort to accommodate his medical limitations. Although the record indicates that appellant averaged slightly more than eight hours of work per day, the "modified" letter carrier position description approved by appellant's physician does not specifically preclude appellant from working in excess of eight hours per day. As such, appellant has failed to substantiate his allegation that the employing establishment required him to work beyond the limitations imposed by his physician.

With respect to appellant's allegation of harassment on the part of his supervisors and coworkers, the Board has held that for harassment to give rise to a compensable disability there

[9] Section 10.123 provides in relevant part:

> "(c) Where the employing agency is notified in writing that the attending physician has found the employee to be partially disabled, and the employee is able to:
>
> * * *
>
> "(2) Perform restricted or limited duties, the agency shall determine necessary whether necessaryaccommodation can be made, and if so, advise the employee in writing of the duties, their physical requirements and availability."

20 C.F.R. § 10.123(c)(2).

[10] The most recent "modified" letter carrier position description was signed by appellant on August 31, 1995.

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

must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable.[12] The allegations of harassment must be substantiated by reliable and probative evidence.[13] Here, the record does not support appellant's contention that he was subjected to public castigation for poor work performance and that his supervisors discussed his allegedly unsatisfactory performance with coworkers. Appellant did not submit any affidavits from coworkers who allegedly heard appellant's supervisor publicly criticize his job performance, and both Mr. Lee and Ms. Bennett denied these allegations. Furthermore, Mr. Grantham, a former union steward, indicated in his June 14, 1995 statement that "Mr. Lee … stated several times that [appellant] was a very good employee and had always performed on an acceptable level." Additionally, Ms. Bennett's placement of notes at appellant's workstation inquiring about his performance does not constitute harassment. Not only is the information contained on the notes relatively innocuous,[14] but also Ms. Bennett explained that part of her responsibilities as a manager included monitoring productivity and providing the necessary feedback.

Appellant's allegations regarding harassment from his peers are similarly noncompensable. While the record clearly indicates that at least one of appellant's coworkers, Debra Thigpen, repeatedly inquired about the availability of appellant's current and former route assignments, her actions do not amount to harassment. Ms. Thigpen expressed her general concerns about the procedures for assigning limited-duty work and more specifically, she questioned the propriety of assigning appellant's former route to another injured employee, Doug Tyre. The record does not reveal any direct confrontations between Ms. Thigpen and appellant regarding the issue of route assignments. To the contrary, the record indicates that Ms. Thigpen pressed her concerns through the proper channels inside the union and with management and that these concerns were ultimately resolved to her apparent satisfaction.[15] Thus, appellant has not established that he was subjected to harassment by either his supervisors or his coworkers.

Finally, appellant alleged that his supervisor, Ms. Bennett, improperly denied him continuation of pay when he initially sustained an injury to his right ankle in January 1992 and that she improperly refused to accept a grievance filed on his behalf in March 1995. Ms. Bennett's actions with respect to appellant's March 1995 grievance were administrative in nature and the record does not establish that her handling of the matter was either erroneous or abusive.[16] Similarly, matters relating to the handling of workers' compensation claims are administrative in nature and do not pertain to appellant's assigned employment duties.[17] Furthermore, Ms. Bennett denied the allegation and correctly noted that she lacked the authority

[12] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[13] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

[14] The first of two notes submitted by appellant states: "This is high can you identify why?" The second note reads: "Hang in there remember 15.00's are our goal."

[15] Neither appellant or Mr. Tyre were ever forced to relinquish their limited-duty assignments as a result of the actions taken by Ms. Thigpen.

[16] *See Janet I. Jones*, *supra* note 7.

[17] *Bettina M. Graf*, 47 ECAB 687, 689 (1996).

to determine appellant's entitlement to continuation of pay. As such, neither alleged incident constitutes a compensable factor of employment.

Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.[18] Inasmuch as appellant failed to implicate any compensable factors of employment, the Office hearing representative properly denied his claim without reviewing the medical evidence of record.

The September 3, 1997 of the Office of Workers' Compensation claims is, hereby, affirmed.

Dated, Washington, D.C.
October 15, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[18] *Gary M. Carlo*, 47 ECAB 299, 305 (1996).