

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TYRONE CAIN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Los Angeles, CA

*Docket No. 97-2826; Submitted on the Record;
Issued September 1, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On May 31, 1996 appellant, then a 48-year-old distribution clerk, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to his employment. He attributed his claimed emotional condition to being fired from his job in 1990 for threatening a supervisor, Ms. Lozano,¹ being harassed generally by his supervisors, being harassed by supervisor Brenda Gillett regarding items such as perfume which he sold at work on his own time, working at a detail by himself when it should have been manned by two people, being criticized by Ms. Gillett regarding his job performance, being counseled by Ms. Gillett on February 28, 1996 regarding her work expectations and his attendance, having to file grievances concerning overtime work, having an early work detail that he had requested one year earlier taken away by Ms. Gillett, being denied a schedule change,² being given conflicting instructions by Ms. Gillett, being unfairly denied overtime work on April 22, 1993 and February 24, 1996,³ being detailed to another work station even though he felt that he still had work to perform at his first work station, being told to perform work that could not be completed by the end of his shift, being asked by Ms. Gillett the names of the employees who liked her, being charged with absent without leave (AWOL) for failing to provide requested medical documentation for a May 14, 1996 absence, having meetings with management officials concerning Ms. Gillett, being accused by Ms. Gillett that he did not correctly enter his time worked on June 14, 1996 which

¹ The record shows that appellant was placed on administrative leave on November 1, 1990 for making a threat to a supervisor. He was reinstated on April 14, 1991 with back pay following a grievance settlement.

² Appellant wished to commence work one hour early so that he could assist his wife with their foster children.

³ The record shows that appellant filed a grievance about being denied overtime on April 22, 1993 and February 24, 1996 and that the grievance was denied at step 2 on the grounds that management made a decision based on mail volume that overtime was not needed.

caused him to be \$700.00 short in pay, having Ms. Gillett go to another supervisor, Ms. Cariaga, and ask questions about what appellant did when he came to work early,⁴ being told by Ms. Gillett that he should have enough sense to come back if he saw mail in his station, and having Ms. Gillett visit him before she became his supervisor and purchase perfume that he was selling on his own time.

In a statement dated June 4, 1996 and a letter dated June 6, 1996, Ms. Gillett stated that she had not treated appellant any differently than the other employees and she denied that she had requested that his early reporting detail assignment be taken away. She stated that this detail was terminated because he had been on it for one year. Ms. Gillett noted that the detail was terminated by a higher-level administrator because she did not have the authority to terminate the detail herself. She denied that she had ever harassed or abused appellant and that her interactions with him were within the scope of his performance of his duties. Ms. Gillett denied that appellant had been unfairly asked to man a two-person station by himself and stated that mail flow dictated the staffing of a duty station. She denied that appellant was improperly sent to another station out of his unit, stating that employees were sometimes sent to other areas to assist when the mail handling work was sufficiently caught up at their assigned stations.

In a Merit Systems Protection Board initial decision dated April 10, 1991, an administrative judge stated that a settlement agreement had been reached concerning the removal of appellant from his position and appellant had withdrawn his appeal. Under the settlement agreement, the employing establishment cancelled its charges against appellant for threatening a supervisor and appellant was reinstated as of April 14, 1991 with back pay.

In a report dated May 23, 1996, Dr. D. Andrews, a psychiatrist, related appellant's complaint that his new supervisor was harassing him, would not let him come in early to work, and would not assign him to overtime work.

In a disability certificate dated May 24, 1996, a physician diagnosed situational stress on the job and indicated that appellant was disabled from May 20 to 23, 1996.

In a disability certificate dated May 29, 1996, Dr. Andrews diagnosed "occupational problems" and indicated that appellant had job-related stress due to a conflict with his supervisor.

In a statement dated August 13, 1996, Ms. Gillett denied that she had asked appellant to perform work which he could not complete before the end of his shift.

In a letter dated October 3, 1996, Ms. Gillett noted appellant's complaint that he was short \$700.00 on a paycheck and stated that this was because he had not submitted his documentation for a long-term absence in a timely manner. She noted that he had subsequently provided the required documentation and his pay had been adjusted. Ms. Gillett denied that she had ever told appellant that he should have enough sense to go back to his station if he saw mail

⁴ Appellant alleged that Ms. Cariaga told Ms. Gillett that he did not do anything when he came in early but Ms. Cariaga denied that she said this when appellant asked her about this.

and that she cannot recall ever making any derogatory statements to appellant or discriminating against him in any way.

By decision dated October 17, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he had sustained an emotional condition causally related to compensable factors of his employment.

In an undated letter received by the Office on October 31, 1996, appellant requested an oral hearing before an Office hearing representative.

In a report dated January 13, 1997, Diana Harrison, a psychologist, related that appellant had a history of trouble on the job that led to his termination in 1991 followed by his reinstatement. She diagnosed a major depressive episode.

On May 27, 1997 a hearing was held before an Office hearing representative at which time appellant testified.

In a statement dated May 27, 1997, Ms. Gillett denied that she had unfairly denied appellant overtime work and noted that when she had not scheduled someone to work overtime it was because there was insufficient mail volume to warrant overtime. She stated that she treated appellant no differently than other employees.

By decision dated June 11, 1997, the Office hearing representative affirmed the Office's October 17, 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.⁵ 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.⁶

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

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

adversely affected by employment factors.⁷ 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.⁸

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.⁹ 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.¹⁰

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 of being improperly assigned to work by himself at a two-man duty station, being criticized concerning his job performance and counseled about his attendance by his supervisor, being denied overtime work, being detailed to another work station when he felt he still had work to do at his regular station, receiving a paycheck which was \$700.00 short, being charged with AWOL for failing to provide requested medical documentation, and being removed from his job for threatening a supervisor, 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.¹¹ Although these matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹² 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.¹³ In this case, appellant's supervisor, Ms. Gillett, denied that she improperly asked appellant to man a two-man duty station by himself and stated that work volume dictated the staffing of any duty station. She denied that appellant was ever improperly sent to another station, stating that this was done only

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁹ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

¹⁰ *Id.*

¹¹ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹² *Id.*

¹³ *Id.*

when his assistance was required in other work areas and his own work was sufficiently current. She denied that she unfairly denied appellant overtime work and noted that overtime work was

signed only when there was sufficient work to warrant it. Regarding appellant's allegation that he was short \$700.00 on a paycheck, Ms. Gillett stated that this occurred because appellant failed to provide documentation for a long-term absence and that he received the \$700.00 after he had supplied the requested information. Regarding appellant's removal from his job for threatening a supervisor, in a Merit Systems Protection Board initial decision dated April 10, 1991, an administrative judge stated that a settlement agreement had been reached concerning the removal of appellant from his position and appellant had withdrawn his appeal. Under the settlement agreement, the employing establishment cancelled its charges against appellant for threatening a supervisor and appellant was reinstated as of April 14, 1991 with back pay. Although appellant was reinstated to his position, there is insufficient evidence that the Office erred or acted abusively in removing appellant from his position. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's early work detail that was terminated after one year and the denial of his request for a schedule change, the denial by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹⁴ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. He alleged that he was harassed generally by his supervisors, that Ms. Gillett harassed him concerning his sales of products at work on his own time, and that Ms. Gillett told him that he should have enough sense to go back to his station if he saw work there. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁵ 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.¹⁶ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination. Ms. Gillett stated that she did not harass appellant or discriminate against him and that her interactions with him were within the scope of his job performance. She denied that she ever told appellant he should have enough sense to go back to his station if he saw work there. Appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹⁷ Thus, appellant has not established a compensable employment factor under the Act in this respect.

¹⁴ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹⁵ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁶ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁷ 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).

Regarding appellant's allegations that Ms. Gillett asked him for the names of the employees who liked her, that he filed grievances concerning the denial of his requests to work overtime, that Ms. Gillett purchased perfume from him at work before she became his supervisor, these allegations concern matters that bear insufficient relationship to appellant's regular or specially assigned duties to be deemed compensable factors of employment.

Regarding appellant's allegations that he was given conflicting instructions by Ms. Gillett, that she told him to perform work that he could not complete by the end of his work shift, that she went to another supervisor and asked what appellant did when he came to work early, Ms. Gillett has denied these allegations and appellant has provided insufficient evidence to establish these incidents as factual. Therefore, he has not established a compensable factor of employment regarding these allegations.

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.¹⁸

The decisions of the Office of Workers' Compensation Programs dated June 11, 1997 and October 17, 1996 are affirmed.

Dated, Washington, D.C.
September 1, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki, supra* note 10.