

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL CURRAN and U.S. POSTAL SERVICE,
WOBURN POST OFFICE, Woburn, MA

*Docket No. 98-1523; Submitted on the Record;
Issued August 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that his emotional condition was caused by factors of his federal employment.

On December 20, 1996 appellant, then a 53-year-old postmaster, filed a claim for an occupational disease (Form CA-2) alleging that he first became aware of his depression, anxiety, anger, fear, sadness and other feelings on November 8, 1996. Appellant stopped work on November 8, 1996.

By letter dated January 21, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office then advised appellant to submit factual and medical evidence supportive of his claim.

In response to the Office's January 21, 1997 letter, appellant, through his counsel, submitted factual evidence. Subsequently, appellant submitted medical evidence and additional factual evidence.

By decision dated January 12, 1998, the Office found the factual and medical evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the

employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. 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 condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

Appellant has alleged that, subsequent to his return to work on October 15, 1996 from being out due to heart bypass surgery in July 1996, he was harassed during a discussion with his supervisor, Joseph F. Kusiak. Appellant stated that Mr. Kusiak repeatedly asked him whether his health could withstand the additional stress of the job and that he reassured Mr. Kusiak that he wanted to return to his position as postmaster and that the normal stress of the job was not a problem. Appellant has also alleged that his supervisor harshly questioned him about a problem with an employing establishment vehicle that belonged to another facility and was not his responsibility. Appellant has further alleged that his supervisor went out of his way to embarrass him in front of his subordinates and to another supervisor.

The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act.⁴ Mere perceptions alone of harassment and discrimination are not compensable under the Act.⁵ To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment and discrimination with probative and reliable evidence.⁶ The specific allegations made by appellant in this case do not establish a pattern of harassment or discrimination by the employing establishment.

In response to appellant's allegations of harassment, Mr. Kusiak denied having ever harassed appellant and bringing up the issue of stress in his March 19, 1996 narrative statement. Specifically, Mr. Kusiak stated that appellant brought up the issue of stress and that appellant's ability to handle stress was only mentioned at the October 15, 1996 meeting after appellant

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

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

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Id.*

⁵ *Wanda G. Bailey*, 45 ECAB 835 (1994); *William P. George*, 43 ECAB 1159 (1992); *Joel Parkers, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ *Ruthie M. Evans*, *supra* note 5.

advised him of his physician's concerns. Further, Mr. Kusiak stated that he noticed a letter carrier driving out of the parking lot and not adhering to employing establishment safety policy which put the carrier, as well as, the public in danger. He further stated that he asked appellant whether that vehicle and driver were assigned to his operation knowing that there were approximately 80 carriers and vehicles housed in the Woburn facility that were not assigned to appellant. Mr. Kusiak noted that his question was routine and not harsh or threatening. Mr. Kusiak indicated that appellant was scheduled to attend a meeting with other postmasters to discuss the financial performance of their offices and that appellant failed to show up for the meeting. Mr. Kusiak explained that he telephoned appellant's office and was told by a supervisor that appellant had left the prior day because he was not feeling well and that his whereabouts were unknown. Mr. Kusiak stated that there is an expectation that every postmaster inform him whenever they will be out of the office and that if the absence is due to an emergency, they are to notify him as soon as possible. Mr. Kusiak then stated that he told the supervisor that he would wait to hear from appellant and discuss the matter with him at that time. Mr. Kusiak indicated that, as of November 5, 1996, appellant would have been overseeing the operation of the Woburn facility for approximately three weeks and that this was sufficient time for an operations manager to assess the operation, determine problem areas and work on strategies for improvement. He noted that he had already met with appellant and discussed some strategies that began during his absence, that appellant was advised to discuss his operation with the person who replaced him during his three-month absence and that appellant had seven supervisors who were available to assist him in refamiliarizing himself with and analyzing the operation.

Appellant has failed to submit evidence to corroborate his allegations of harassment by Mr. Kusiak. Thus, the Board finds that appellant's allegations are not established as having occurred by evidence in the present case record.

Appellant has contended that his supervisor made a nonroutine and highly unusual unannounced visit to his facility. Appellant has also contended that the collection boxes were tested and that he had three unannounced audits. Further, appellant has contended that in the memorandum he found from his supervisor, there was a request that he attend a meeting to discuss, *inter alia*, his performance for the period mid-September to October 31, 1996, a period that appellant stated he was on sick leave for the most part due to his bypass surgery.

The unannounced visit and audits made by Mr. Kusiak, which are essentially investigations,⁷ and the memorandum regarding a meeting appellant was going to have with his supervisor to discuss his performance⁸ constitute administrative or personnel matters. The Board has held that matters which do not involve an employee's regular or specially assigned duties are administrative functions of the employing establishment and that these matters are not considered to be employment factors.⁹ However, the Board has also found that an administrative

⁷ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

⁸ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

⁹ *Frederick D. Richardson*, 45 ECAB 454 (1994); *Jimmy B. Copeland*, *supra* note 7; *Arthur F. Hougens*, 42 ECAB 455 (1991).

or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. Regarding his unannounced visit, Mr. Kusiak stated in his narrative statement that every postmaster can and does expect to see him on any given day as he is responsible for overseeing day-to-day operations. He then stated that visits should be expected. Concerning appellant's allegation of unannounced audits, including the collection box test, Mr. Kusiak stated that this was routine. He explained that the district conducted countless unannounced operational audits to assure that high levels of performance are achieved. He further explained that 6,300 boxes were tested a year in the 55 largest offices in the district and that the larger offices could be tested up to a dozen times a year. Appellant has not submitted any evidence to substantiate his allegations that the employing establishment acted unreasonably in the way it carried out the unannounced visit and audits. Further, appellant has not substantiated that he had a meeting with his supervisor regarding his performance. Therefore, the Board finds that appellant's allegation is not established as having occurred by evidence present in the case record. Accordingly, appellant has not established a factor of employment under the Act.

Appellant has alleged that within a short period of time after his return to work, his supervisor gave him a number of assignments and undertook a number of actions that made him feel extremely upset, sad and threatened. Specifically, appellant alleged that his supervisor: (1) immediately assigned him special status reports on a number of things in his post office for the period of time he had been absent; (2) assigned him a series of status reports on projects initiated by the officer in charge during his absence; (3) asked him for reports on a proposal to change clerical schedules, placing of routes into delivery point sequence and an update regarding a process management team that was formed within his three-month absence from work; (4) requested status reports on areas that he had no control over, *inter alia*, sortation scheme problems; and (5) gave him short time frames for the completion of these reports. Appellant stated that he became extremely nervous about handling the special assignments and could not help feeling that his supervisor was out to get him. Appellant has also alleged that he became nervous and greatly upset about his regular work. Appellant noted that during his first week back at work he tried to meet with his seven supervisors, review correspondence, inspect the plant, determine problems, review a new budget for the next fiscal year that was received during his absence, deal with maintenance problems, as well as, other important matters such as, planning for Christmas which was a major postal operation. In addition, appellant has alleged that his supervisor requested an action plan regarding mail found in the canceling machine. Appellant contended that he was overcome by a memorandum he found from his supervisor requesting his attendance at a meeting to discuss work-hour overruns, high delivery overtime, high sick leave and low productivity. Appellant noted that the memorandum also requested action plans for a period of time that he was not at the employing establishment and that he had no time to familiarize himself or analyze what had gone on in these areas.

Mr. Kusiak indicated in his narrative statement that he met with appellant on October 15, 1996 to discuss his return to work and the challenges of the employing establishment, specifically, the improvement of efficiencies and service. Mr. Kusiak noted that he next met with appellant on October 28, 1996 and the following issues were discussed: (1) the employing establishment's accuracy and integrity in the "CSDRS" data; (2) a "DPS" was not being managed; (3) a district policy was not being followed inasmuch as appellant had failed to notify

the district manager of the delayed “pref. mail;” and (4) the customer service operation had not been managed properly. He noted that he had granted appellant’s request for an extension on the due dates for the action plan and/or information on all of the above. Regarding a status report on the sort plan problem, Mr. Kusiak stated that he wanted an explanation of the circumstances about appellant’s delay of 250 pieces of first class mail on October 28, 1996. Mr. Kusiak noted his findings during a visit to appellant’s facility which included, his discovery of 500 pieces of first class mail sitting in a corner and requested that appellant provide a standard operating procedure which would eliminate this error from happening again.

Appellant’s above allegations involving his specially assigned and regular work duties are established as having occurred by evidence present in the case record and by their nature, they arise out of and in the course of appellant’s assigned duties, thus, appellant has established compensable factors of his employment under the Act. Appellant’s burden of proof, however, is not discharged by the fact that he has established employment factors which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁰

In support of his claim, appellant submitted two medical reports. A February 20, 1997 medical report from Dr. Alfred E. Darby, Jr., a Board-certified psychiatrist, providing appellant’s employment and medical histories and describing events that took place at the employing establishment including, *inter alia*, the accepted employment factor of the special assignments and deadlines given to appellant by Mr. Kusiak. Dr. Darby diagnosed depression and opined that “the depression suffered by [appellant] is of the type and is probably caused by the events described at his place of work.” The Board has held that, while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,¹¹ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹² Inasmuch as Dr. Darby’s opinion that appellant’s depression is “probably” caused by events described, which included the compensable employment factor of appellant’s special assignments and deadlines, is speculative and is not explained by medical rationale, it fails to establish appellant’s burden.

A medical report from Dr. Donald W. Steele, a licensed psychologist, of the same date documented stressful situations in both appellant’s home life and his employment including, the compensable employment factor of appellant’s specially assigned reports on items during the

¹⁰ *William P. George, supra* note 5 at 1168.

¹¹ *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

¹² *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

period he was absent from work and his request that the deadlines for the reports be postponed. Dr. Steele also documented appellant's medical treatment and his findings on physical examination. He opined that, based on his observation, appellant was clearly depressed and quite anxious. Dr. Steele also opined that "much of [appellant's] anxiety is work related from a sense that the additional assignments and new expectations are unrealistic and cannot be fulfilled." He stated:

"[I]n my opinion the high volume of work and the special assignments without regard to the fact that [appellant] also has 160 employees to supervise and several other offices for which he is responsible without previous outlining of a new job description and with fairly severe and constant criticism some of which is being made directly to him and some of which is being related to him second-hand through apparent comments by his supervisor behind his back are causes of anxiety, stress and threat. In my opinion the change [appellant's] expectations have been presented not as reasonable expectations for change in the job which an employer is entitled to make, but rather as a focus of increased stress and concern that he cannot take it. The changes come appearing as hurdles for him to prove that he can perform and see if he can tolerate the stress rather than as clear performance objectives. This appears to be a serious change in the expectations of the job and because of the uncertainty and the criticism under which he is placed are intimidating and highly anxiety producing in an atmosphere where there is little communication and negotiation. These are clearly a recipe for feeling helpless, out of control and depressed.

"In my opinion [appellant's] stress is job related because of the fact that it originates from the change in expectation of work level, the vagueness of the expectation of high volume of work, special assignments and the veiled threat of loss of his job. Stress and anxiety are a natural component of uncertainty, threat and change.

"In short the high volume special assignments that have been given to him and the high expectations for meeting unstated goals are a cause of serious anxiety and depression."

The Board finds that, although Dr. Steele's report does not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he sustained an emotional condition caused by compensable factors of his employment, it contains a history of injury, as well as an opinion that appellant's emotional condition was causally related to accepted employment factors, as supported by Dr. Darby's report and uncontradicted by any opposing medical evidence, to require further development of the record.¹³ On remand, the Office should further develop the medical evidence by preparing a statement of accepted facts including the accepted employment factors and referring appellant to an appropriate physician for an opinion as to whether those factors caused or aggravated

¹³ See *John J. Carlone*, 41 ECAB 354, 358 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

appellant's emotional condition. After this and such other further development as the Office deems necessary, the Office should issue an appropriate decision.

The January 12, 1998 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
August 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member