U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES P. GUINAN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

Docket No. 99-1260; Submitted on the Record;
Issued August 1, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On February 13, 1998 appellant, then a 40-year-old mail clerk, 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 described the nature of his condition as job-related stress. Appellant identified January 10, 1998 as the date he first realized his illness was caused or aggravated by his employment. While he did not submit any medical evidence in support of his claim, appellant did provide a detailed statement pertaining to an incident on January 10, 1998 when his supervisor denied a request for leave. Appellant also indicated that he was forced to work in an environment that was full of dust, paper and other debris and that the employing establishment failed to correct the noted problems when requested to do so.

On February 25, 1998 the Office of Workers' Compensation Programs requested that appellant provide additional medical and factual information. He did not respond to the Office's request.

By decision dated April 15, 1998, the Office denied appellant's claim on the basis that he failed to establish that his claimed injury was sustained as alleged. In an accompanying memorandum, the Office explained that appellant not only failed to submit medical evidence documenting a work-related medical condition but also failed to implicate any compensable employment factors.

Appellant filed a second occupational disease claim on October 31, 1998. He alleged that he was suffering from stress and anxiety due to constant harassment from management. Although he did not identify a specific date of onset of his claimed employment-related

emotional condition, appellant's Form CA-2 indicates that he first sought medical treatment for his condition on September 25, 1998.

In an accompanying statement, appellant explained that he was harassed by management on September 25, 1998 and as a result he experienced elevated blood pressure and headaches. He further indicated that he sought treatment at the employing establishment health unit that day and the nurse on duty confirmed that his blood pressure was high and suggested that he go to the hospital. Appellant explained that management denied his request to leave and instead referred him to the Employee Assistance Program (EAP). After an hour with the EAP counselor, appellant explained that he continued to feel ill and, therefore, he requested sick leave for "job-related stress." The employing establishment allegedly refused appellant's leave request and "continued to harass" him about filling out a Form CA-2. Appellant was subsequently permitted to leave work after his lunch hour. Additionally, he described himself as a disabled veteran and he explained that for years he had been receiving medical treatment for his employment-related stress and anxiety. Appellant further stated that management was aware of his disability and also aware that he had been taking medication for stress. He alleged that the employing establishment, aware of his medical condition, deliberately harassed him to elicit a reaction. Appellant specifically alleged that management harassed him to increase his productivity. He also noted that he had been subjected to disciplinary action.

Clara L. Houston, an employing establishment supervisor, provided an undated statement wherein she indicated that she met with appellant and his union steward on the morning of September 25, 1998 to discuss certain unspecified issues.[1] Ms. Houston explained that, at the conclusion of their conversation, appellant requested to see the health unit nurse. She further stated that appellant subsequently requested leave due to a job-related injury. Ms. Houston explained that she denied this request because appellant had not completed any paperwork indicating that an accident had occurred on September 25, 1998. She further indicated that appellant declined to submit the requested claim form and initially refused to amend his leave request. When appellant subsequently submitted a request for sick leave, Ms. Houston stated that his request was granted and that he left work around 1:00 p.m. that afternoon.

Appellant's most recent claim was accompanied by an October 21, 1998 report from Dr. Harold J. Bowersox wherein the doctor diagnosed severe anxiety disorder, stress reaction to adulthood, controlled seizure disorder and headaches. Dr. Bowersox noted that appellant "feels alot (sic) of anxiety and stress at work due to supervision constantly riding him."

After further development of the medical and factual evidence, the Office denied appellant's October 31, 1998 claim by decision dated February 26, 1999. The Office explained that appellant failed to establish that his claimed emotional condition arose as a result of his federal employment.

[1] Appellant explained that the meeting with Ms. Houston on September 25, 1998 pertained to an incident that occurred the day before when he did not have a time badge to clock in and out of work. Appellant was apparently instructed to see Ms. Houston when he finished work on September 24, 1998. Ms. Houston last saw appellant several minutes prior to the expiration of appellant's tour, and consequently, he was not credited with a full day's work. Appellant explained that he learned of this fact when he reported to work on September 25, 1998. He immediately sought the advice of his union steward and the two later met with Ms. Houston to discuss the matter.

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

In order to establish that he 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 or psychiatric disorder is causally related to the identified compensable employment factors.[2] Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.[3]

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 to 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.[4] 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.[5]

With respect to appellant's initial claim filed on February 13, 1998, he alleged that his claimed condition of job-related stress resulted from a January 10, 1998 incident when his supervisor denied his request for leave. Appellant indicated that at approximately 7:00 a.m. he submitted a request for annual leave to be used later that afternoon at 1:00 p.m. When he did not receive a response within a couple hours of submitting his request, appellant explained that he approached his supervisor around 10:40 a.m. to inquire about the status of his leave request. The supervisor purportedly told appellant that he was not sure whether he would be able to let appellant go. Approximately 20 minutes later, appellant was advised that his leave request was denied because of the "needs of service." Appellant explained that, upon receipt of the news, his heart began to race and he experienced a pulsating headache. He further indicated that he was "pissed off and [had] trouble thinking clearly."

Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[6] As a general rule, a claimant's reaction to administrative or personnel matters falls

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

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

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

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

[6] *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

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 discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[8]

Appellant did not allege that the employing establishment's stated reason for denying his leave request on January 10, 1998 was either erroneous or abusive. Additionally, there is no evidence of record to suggest that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities. Although appellant indicated that he assumed his request for annual leave would be approved, under the circumstances one might reasonably expect that an apparent nonemergency request for leave submitted only six hours prior to the time of the requested departure would be denied based on the "needs of service." Furthermore, appellant stated that, when his request was denied at approximately 11:00 a.m., his supervisor explained that he might be able to release him at approximately 1:30 p.m. when the next tour arrived.

While appellant does not specifically challenge the stated reason for the denial of his leave request, he does take issue with the timing of the denial. He alleged that the union and the employing establishment had agreed that leave requests would be addressed within a reasonable time frame. Appellant stated that the agreement required a response within one to two hours of submission of such requests. However, his leave request was denied approximately four hours after he submitted it on the morning of January 10, 1998. The record does not include a copy of this purported agreement. Assuming the accuracy of appellant's assertions, under the present circumstances the delay in responding to appellant's leave request does not appear to be unreasonable. Accordingly, appellant has failed to demonstrate that the employing establishment either erred or acted abusively in handling his January 10, 1998 leave request.

Appellant also noted that he was forced to work in an environment that was full of dust, paper and other debris and that the employing establishment failed to correct the noted problems when requested to do so. He cited this as an example of management's inconsistent enforcement of safety regulations. Appellant explained that, while the employing establishment routinely advised employees about the importance of adhering to safety rules, management rarely responded to safety concerns expressed by the employees. It is not entirely clear whether appellant is alleging that the ostensibly unsafe working conditions, and the employing establishment's purported failure to correct them, contributed to his claimed emotional condition. However, to the extent appellant is attributing his claimed emotional condition to these allegedly unsafe working conditions, appellant has failed to provide any evidence to substantiate his assertions. Moreover, as previously noted, an employee's frustration from not

[7] *Id.*

[8] *Id.*

being permitted to work in a particular environment is not compensable.[9] Additionally, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[10]

As appellant failed to identify any compensable factors of employment, the Office properly denied his claim dated February 13, 1998.

With regard to appellant's claim filed on October 31, 1998, he alleged that he was harassed by management on September 25, 1998 and that this harassment caused him to experience stress and anxiety. The harassment apparently began during an early morning meeting between appellant and his supervisor and later continued when appellant requested leave for "job-related stress," which was denied.

The Board has held that for harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable.[11] The allegations of harassment must be substantiated by reliable and probative evidence.[12] In the instant case, appellant has not presented evidence that he was harassed in the workplace. What appellant has characterized as harassment was in actuality a series of events wherein the employing establishment was discharging its administrative responsibilities with respect to leave requests and attendance matters. As previously noted, such administrative matters, while related to the employment, are not duties of the employee.[13] And as a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.[14] In order to bring these administrative matters within the ambit of the Act, the evidence must demonstrate that the employing establishment either erred or acted abusively in discharging its responsibilities.[15]

Appellant indicated that during his meeting with Ms. Houston on the morning of September 25, 1998 he expressed his dissatisfaction with being clocked out early the prior afternoon. He explained that on September 24, 1998 he did not have his time badge and, therefore, Ms. Houston provided him with a Form 1260 to document his arrival and departure time. She indicated that she advised appellant that she needed to physically see him at the end of his tour in order to document his departure time. Appellant stated that he last saw Ms. Houston at 15:37 at which time he gave her the Form 1260 and told her "I [wi]ll see you tomorrow." Ms. Houston, therefore, recorded 15:37 as the time of appellant's departure, which was prior to the expiration of his tour at 15:50. While appellant indicated that he remained on the premises, there is no indication that Ms. Houston was aware of his continued presence.

[9] *See Lillian Cutler, supra* note 4.

[10] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

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

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

[13] *See Dinna M. Ramirez, supra* note 6.

[14] *Id.*

[15] *Id.*

Appellant indicated that when he spoke with Ms. Houston about the matter on the morning of September 25, 1998 she allegedly "chuckled." Ms. Houston, however, denied chuckling or laughing at appellant on September 25, 1998. Although appellant filed both a grievance and an Equal Employment Opportunity (EEO) complaint regarding the September 24, 1998 incident, the record does not include a final determination with respect to either the grievance or the EEO complaint. Furthermore, based on the events described by both appellant and Ms. Houston, it does not appear that the employing establishment erred in documenting appellant's attendance on September 24, 1998.

The Board finds that the record fails to demonstrate that the employing establishment improperly declined to grant appellant's September 25, 1998 leave request for "job-related stress."

Appellant alleged that he felt ill after his meeting with Ms. Houston on the morning of September 25, 1998. He later reported to the employing establishment health unit with complaints of stress and a severe headache. Appellant's blood pressure was noted as 140/100 and the nurse on duty advised that appellant should be evaluated at a local hospital. He did not go to the hospital but instead attended a previously scheduled appointment with an EAP counselor. After his approximate one-hour meeting with the EAP counselor, appellant submitted a request for sick leave for an injury on duty. Ms. Houston explained that she was not at liberty to approve appellant's request for leave due to an injury on duty without appellant having first completed the required claim forms. She further noted that appellant refused to complete the necessary claim forms and also refused to amend his leave request. Appellant indicated that he was disoriented at the time and could not complete the necessary forms and all he wanted was "to go home and lay down." He subsequently amended his leave request and was permitted to leave at 1:00 p.m.

Appellant filed a grievance and an EEO complaint regarding the above-noted incident, however, the record does not include a final determination with respect to either filing.

Given the health unit nurse's recommendation that appellant obtain medical treatment for his condition, it would appear at first glance to be inherently unreasonable for the employing establishment to prolong appellant's departure because of a dispute over the type of leave being requested. However, in retrospect there is no evidence that appellant sought additional medical attention for his elevated blood pressure once he was permitted to leave work at approximately 1:00 p.m. on September 25, 1998. Additionally, appellant played a significant role in contributing to the delay of his departure. While he explained that he was disoriented and thus, could not complete the required claim forms, he offered no similar explanation for his initial refusal to amend his leave request. Appellant's apparent recalcitrance prolonged the time of his departure and his behavior suggests that he was not of the opinion that he was in imminent physical danger if he did not immediately seek additional medical attention. As previously noted, appellant stated all he wanted was "to go home and lay down." Under the circumstances, it does not appear that appellant's condition on September 25, 1998 warranted immediate medical attention and, therefore, the employing establishment's attempt to obtain the proper documentation prior to authorizing appellant's leave does not appear to be unreasonable.

Consequently, the evidence of record fails to demonstrate that the employing establishment either erred or acted abusively in discharging its responsibilities on September 25, 1998.

Appellant also alleged that management harassed him to increase his productivity. Additionally, he noted that he had been subjected to disciplinary action, presumably for his lack of productivity. Appellant, however, did not provide any specific dates or incidents of such harassment. In general, appellant alleged that his supervisors believed he could perform his job faster than he had been, and consequently, they advised him that he had to "move faster." He explained that turning back and forward as fast as his supervisors required made him "dizzy." Appellant stated that he provided the employing establishment with medical documentation regarding his limitations and requested a job he could perform without causing "physical harm" to himself. He further explained that management was aware he had trouble working on some machines, but nonetheless, he was placed on those machines and harassed to get better production.

The record does not support appellant's allegation that the employing establishment, while aware of appellant's physical limitations, required him to perform duties beyond his physical capabilities. To the contrary, the record indicates that the employing establishment promptly reassigned appellant to primary manual distribution when his physician, Dr. Bowersox, recommended a change of assignment in a report dated October 21, 1998. Additionally, there is no evidence of record that appellant was subjected to disciplinary action for his lack of productivity while utilizing a particular piece of machinery.[16] Consequently, appellant has failed to substantiate his contention that the employing establishment required him to perform duties which they knew exceeded his physical limitations.

Inasmuch as appellant failed to substantiate or implicate a compensable employment factor as a cause of his claimed emotional condition, the Office properly denied appellant's October 31, 1998 claim.

[16] While the record includes a July 16, 1998 notice of suspension of 14 days or less, this disciplinary action pertained, in part, to appellant's improper use of a tape recorder on July 9 and 10, 1998. Appellant was also cited for "failure to perform total job responsibilities." This latter citation pertained to appellant's failure to dispatch his mail on July 8, 1998. Appellant's stated reason for failing to dispatch his mail was because there were no available tow-motors to move the mail. There is no indication that appellant's failure to properly discharge his duties on July 8, 1998 was a result of an inability to operate a particular piece of machinery due to certain physical limitations or dizzy spells.

The decisions of the Office of Workers' Compensation Programs dated February 26, 1999 and April 15, 1998 are hereby affirmed.

Dated, Washington, D.C.
August 1, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member