

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARLEY D. CROSBY and U.S. POSTAL SERVICE,
POST OFFICE, Summerville, SC

*Docket No. 97-2526; Oral Argument Held February 8, 2000;
Issued June 26, 2000*

Appearances: *Sheldon G. Turley, Jr., Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty on March 28, 1995.

In this case, appellant alleged that he sustained emotional stress and chest pains in the performance of duty on March 28, 1995 when he was ordered to leave his work station. Appellant asserted that his supervisor used an aggressive tone of voice and that there was no acceptable reason for ordering him to leave.

By decision dated July 24, 1995, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established a compensable factor of employment. In a decision dated February 22, 1996, an Office hearing representative affirmed the prior decision. By decisions dated January 3 and May 8, 1997, the Office denied modification of the prior decisions.¹

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty on March 28, 1995.

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

¹ The Board initially issued a decision in this case on July 26, 1999. By order dated November 5, 1999, the Board vacated the prior decision and the case was scheduled for oral argument.

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

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

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.⁴

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁵ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷

In this case, appellant has alleged that his removal from the employing establishment on March 28, 1995 was erroneous and abusive. The record contains a statement from a supervisor, Patricia Mizzell, indicating that appellant reported to work at 3:30 a.m. on March 28, 1995. According to the supervisor, the postmaster, John L. Ramsey, had reported leaving a message on appellant's answering machine directing appellant not to report to work because he needed further medical documentation regarding appellant's return to work. Appellant denied receiving any message from Mr. Ramsey. The supervisor then arranged for appellant to speak to Mr. Ramsey on a speakerphone; during this conversation, Mr. Ramsey directed appellant to leave the building. Appellant initially stated that he was not leaving, then told Mr. Ramsey that he was going to the doctor. The supervisor and appellant then searched for a CA-1 claim form; during this time, the police arrived and escorted appellant from the building.

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

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

⁵ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁶ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *Anna C. Leanza*, 48 ECAB 115 (1996).

Appellant alleges that there was error and abuse with respect to the administrative actions of Mr. Ramsey on March 28, 1995. The allegation of error involves both the decision not to allow appellant to work on March 28, 1995, despite medical evidence authorizing his return to work, as well as the decision to have the police remove him from the building.

As to the decision not to allow appellant to work, the record does not contain probative evidence of error or abuse. A provision in an employing establishment handbook indicates that employees returning to duty for mental or nervous conditions must provide a physicians statement, which must be approved by an employing establishment medical officer "where available." Another provision indicates that an employee returning to duty after 21 days or more of absence, as in this case must submit medical evidence of ability to work and then medical evidence would be reviewed by a medical officer or contract physician to assist management in placement of jobs. This would appear to allow a supervisor to keep an employee from returning to work until the medical evidence has been reviewed by a medical officer or contract physician. In a statement dated July 11, 1995, the postmaster indicated that the reason appellant was told not to report to work was due to a pending review of the medical evidence he had submitted. There is a second employing establishment regulation which states that in cases of occupational illness an employee "will be returned to work" on certification from the treating physician and then the medical reports will be reviewed as soon as possible by a medical officer or contract physician. It is unclear how this regulation should be interpreted in view of the prior regulations. In the absence of other probative evidence, the Board cannot find that the administrative decision of March 28, 1995 to order appellant to leave the building was a violation of an employing establishment regulation or otherwise constituted error or abuse.

Appellant has also alleged error in the administrative decision to contact the police to escort him from the building. As noted above, the Board examines whether the employing establishment acted reasonably. In this case, the Board finds that the employing establishment acted unreasonably in calling the police to remove appellant from the building.

The Board notes that appellant reported for work on March 28, 1995. Appellant stated and the record confirms that on March 24, 1995 he had submitted a medical report indicating that he could return to work. Although Mr. Ramsey asserted that he left a message on appellant's home telephone advising him not to return to work, appellant denied receiving such a message and there is no other evidence to establish that appellant had been advised not to report to work. The record is consistent in establishing that appellant was advised by telephone on March 28, 1995, that he should leave the building because his medical documentation was not sufficient. With respect to appellant's response, however, there is conflicting evidence. The postmaster, Mr. Ramsey, asserted that appellant stated that he was not leaving and again after attempting to hang up the speakerphone, stated he was not leaving. According to appellant, after being directed to leave the building, he told Mr. Ramsey that he was going to get a CA-1 form and go to the hospital. It is appellant's version that is corroborated by supervisor Ms. Mizzell's statement, because she also indicated that appellant told Mr. Ramsey that he intended to go to the doctor.

Accordingly, the weight of the evidence indicates that appellant had communicated an intent to leave the building. In addition, there is no evidence that appellant was threatening other

employees or otherwise creating a situation that required police intervention. Under the circumstances of this case the Board finds that the actions of the employing establishment in calling the police to escort appellant from the building were unreasonable and, therefore, constitute a compensable factor of employment.

Appellant has also submitted probative evidence of error by the employing establishment in placing him on enforced leave as of March 24, 1995. A decision dated April 1, 1997 from the Merit Systems Protection Board, found that the employing establishment erred in failing to give appellant notice or an opportunity to respond prior to being placed on enforced leave.⁸ Accordingly, the Board finds that appellant has established a compensable factor of employment in this respect.

In order to meet his burden of proof, however, appellant must submit probative medical evidence on causal relationship between a compensable factor of employment and a diagnosed condition. Appellant has not submitted any medical evidence containing a reasoned opinion, based on a complete background, that establishes causal relationship between a diagnosed condition and the identified compensable work factors in this case. In this case, the record contains a form report from a regional medical center's emergency department with a diagnosis of chest pains and anxiety disorder. This report does not contain any history of the March 28, 1995 employment incident or provide any opinion on causal relationship with employment. There is also an undated report from Dr. L. Randolph Waid, a clinical psychologist, which provides results on examination but does not to the March 28, 1995 work factors. In the absence of probative medical evidence on causal relationship, the Board finds that appellant has not met his burden of proof in establishing his claim.

⁸ It is not entirely clear from the record whether the administrative decision to put appellant on enforced leave took place on March 28, 1995 or shortly thereafter. The February 22, 1996 decision from the hearing representative does appear to assume that the enforced leave issue was within the scope of this claim; she made a finding that no error had been established based on the evidence then of record. The Board, therefore, will accept that the administrative decision to place appellant on enforced leave as of March 24, 1995 is within the scope of the March 28, 1995 traumatic injury claim at issue on this appeal.

The decision of the Office of Workers' Compensation Programs dated May 8, 1997 is modified to reflect that compensable work factors have been established and is affirmed as modified.

Dated, Washington, D.C.
June 26, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member