U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALAN F. BORNSTEIN and U.S. POSTAL SERVICE,
POST OFFICE, South Suburban, IL

Docket No. 98-2065; Submitted on the Record;
Issued June 14, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing aggravation of his post-traumatic stress syndrome due to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits on May 19, 1998.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing aggravation of his post-traumatic stress syndrome due to factors of his federal employment.

Appellant, a mail carrier, filed a claim on March 5, 1997 alleging that his diagnosed condition of post-traumatic stress syndrome was causally related to factors of his federal employment. After development of the evidence, the Office denied this claim by decision dated February 25, 1998. Appellant requested reconsideration on May 7, 1998 and the Office declined to reopen appellant's claim for review of the merits on May 19, 1998.

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 concept 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 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 to hold a particular position.[1]

In this case, appellant attributed his emotional condition to the denial of a transfer, denial of light duty, daily telephone calls made to his house by a supervisor, the assignment of the

[1] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

worst routes and disciplinary actions. These actions constituted administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[2] In this case, appellant has submitted no evidence in support of his allegations that his supervisors erred in denying his transfer, denying light duty, issuing disciplinary actions or in calling his home to determine when he could return to duty. Appellant's supervisor explained that appellant's injury was not work related and that therefore he was not entitled to light duty and that the disciplinary actions were justified. He further stated that as appellant had the least seniority he was assigned to routes for which other carriers had not bid. The Board finds that appellant has not met his burden of proof in establishing that the employing establishment erred in an administrative action.

Appellant also attributed his emotional condition to harassment and intimidation by his supervisor. Appellant stated that he was yelled at everyday, that he was told that he did not walk fast enough, that he was given the worst routes and that he was told that he was the worst carrier. Appellant also stated that the disciplinary actions consisting of two suspensions and three letters of warning constituted harassment.

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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[3]

In this case, appellant's supervisor denied that he harassed appellant. He offered explanations for why appellant received the worst routes, why he was denied light duty and asserted that the disciplinary actions were justified. Appellant did not submit any evidence in support of his allegation of harassment, therefore, the Board finds that appellant failed to establish this factor of employment.

As appellant has not substantiated a compensable factor of employment, he has failed to establish that his emotional condition was caused or aggravated by his federal employment and failed to meet his burden of proof.

The Board further finds that the Office did not abuse its discretion by declining to reopen appellant's claim for review of the merits on May 19, 1998.

[2] *Martha L. Watson*, 46 ECAB 407 (1995).

[3] *Alice M. Washington*, 46 ECAB 382 (1994).

Appellant requested reconsideration of the Office's February 25, 1998 decision on May 7, 1998. He submitted additional evidence in support of his reconsideration request. By decision dated May 19, 1998, the Office declined to reopen appellant's claim for review of the merits finding that he failed to submit relevant new evidence.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[4] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review of the merits of the claim.[5]

In support of his reconsideration request, appellant submitted a narrative statement attributing his condition to harassment and disciplinary actions. This statement is cumulative of other evidence previously considered by the Office and is not sufficient to require merit review of appellant's claim.

Appellant resubmitted a finding from the state employment agency previously considered by the Office. He also resubmitted notice from the Department of Veterans Affairs that his condition of post-traumatic stress disorder was 100 percent disabling. He resubmitted a medical note dated December 8, 1997. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[6]

Appellant submitted medical notes dated December 7, 1995 and January 6, 1998. Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary for the Office to address the medical evidence.[7] As the Office denied appellant's claim for failure to establish a compensable factor of employment, it was not necessary to reach the medical evidence. Therefore, additional medical evidence which did not substantiate the specific employment factors alleged is not relevant to the reason that appellant's claim was denied and is not sufficient to require the Office to reopen appellant's claim for review of the merits.

Appellant also submitted notice from the Office of Personnel Management that his disability retirement had been approved. The Board notes that findings of other federal agencies are not dispositive with regard to questions arising under the Act. The Office of Personnel Management (OPM) and the Office had different standards of medical proof on the question of disability. Under the Act, for a disability determination, appellant's injury must be shown to be

[4] 20 C.F.R. § 10.138(b)(1).

[5] 20 C.F.R. § 10.138(b)(2).

[6] *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

[7] *Effie O. Morris*, 44 ECAB 470, 474 (1993).

causally related to accepted factors of his federal employment. OPM may consider conditions which are not work related in rendering a disability determination.[8] As this evidence did not address the specific issue in this case, whether appellant sustained an aggravation of his service-related post-traumatic stress syndrome due to factors of his federal employment, it is not relevant to the reason for which the Office denied appellant's claim and is not sufficient to require the Office to reopen his claim for review of the merits.

The decisions of the Office of Workers' Compensation Programs dated May 19 and February 25, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 14, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] *Daniel Deparini*, 44 ECAB 657, 659-60 (1993).