

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH A. CHASTAIN and U.S. POSTAL SERVICE,
Little Rock, AR

*Docket No. 99-97; Submitted on the Record;
Issued June 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On December 21, 1995 appellant, then a 43-year-old postal inspector, filed an occupational disease claim, alleging that his stress was caused by being placed on administrative leave and being found unfit for duty for allegedly making threats to a person. He was placed on administrative leave in November 1995. In an accompanying statement, he stated that a change in assignment, an "unsuccessful" performance appraisal and the refusal of a hardship transfer request also caused stress. He explained that in 1993, while working for the employing establishment in Cleveland, Ohio, a neighbor, Mary Palmer, had filed a report with the police, alleging that he had threatened her. This led to a fitness-for-duty examination and a transfer to Arkansas. He was found unfit for duty and returned to work in May 1994. In 1995 the former neighbor again alleged that he threatened her. He was placed on administrative leave, was ordered to attend a fitness-for-duty examination and relinquished his credentials and weapon but was required to attend court proceedings regarding employing establishment cases.

By letter dated April 5, 1996, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his claim, to include a comprehensive medical report from his treating physician explaining how employment factors caused his condition. The Office informed appellant that he had approximately 30 days to respond. By decision dated May 6, 1996, the Office found that appellant established two factors of employment -- that he was required to transfer narcotics as evidence for a trial in his personal automobile without his credentials or weapon and that he was required to attend a hearing without his case file. The Office, however, denied the claim on the grounds that appellant had not submitted supportive medical evidence.

On May 30, 1996 appellant requested a hearing, which was held on March 20, 1997. At the hearing appellant testified that shortly after his wife died in 1993, he was reassigned to a

supervisor, Paul Hartman, who harassed him and gave him an unsatisfactory rating and that he was required to undergo a fitness-for-duty examination. He requested a transfer and, after initially being refused, was transferred to Little Rock, Arkansas in October 1993. After returning to Cleveland to testify in a trial, he was informed that he had been found unfit for duty. He alleged that he was given an unreasonable disciplinary discussion in Arkansas. Appellant discussed his regular job duties including overwork, and stated that his supervisors were constantly “looking over his shoulder,” and that he was talked about behind his back. He testified that the statements made by the doctor on his fitness-for-duty examination were untrue and that his supervisor provided false information. He stated that he had been removed as unfit for duty and that while on administrative leave, he had to transport narcotics in his personal car without credentials or a weapon and had to testify without a case file. He further alleged that he was being persecuted and retaliated against by the employing establishment and concluded that his behavior had been put under a microscope because he has been branded as “mental.” The hearing representative made several requests at the hearing that a 1994 Merit Systems Protection Board decision be provided. Appellant submitted medical evidence at the hearing as well as personal notes documenting the events of September 10 to November 2, 1993.

By decision dated May 30, 1997, the hearing representative affirmed the prior decision, finding that the medical evidence was insufficient to establish that appellant’s emotional condition was causally related to the established employment factors. By letter dated December 4, 1997, appellant, through counsel, requested reconsideration and submitted additional medical evidence. In an August 26, 1998 decision, the Office denied modification of the prior decision. The instant appeal follows.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Workers’ compensation law is not applicable to each and every injury or illness that is somehow related to 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees’ Compensation Act.² On the other hand, there are situations when an injury has some connection with the

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 5 U.S.C. §§ 8101-8193.

employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.³

The employing establishment submitted an undated report from M.L. Bain, appellant's supervisor, who discussed the cases in which appellant was required to testify. In a statement dated January 29, 1996, Ira T. Carle, who was Inspector in Charge of the Cleveland Division, in September and October 1993 stated that he talked with the Medina, Ohio Police Department who verified Ms. Palmer's charges against appellant and that this formed the basis for requiring that appellant undergo a fitness-for-duty examination. He noted that, while appellant was initially found fit for duty, he was later informed by the chief inspector that he was found not fit for duty.

In a February 8, 1996 report, F.J. Marion, who had been Inspector in Charge of the Cleveland Division from January 1990 to May 1993, reported that appellant was obviously grief stricken following the death of his wife and noted that his performance was less than satisfactory.

The relevant medical evidence⁴ includes a report dated April 21, 1994, in which Dr. Robin L. Ross, who is Board-certified in psychiatry and neurology, diagnosed adjustment disorder with mixed features. In a May 17, 1994 treatment note, she advised that he was fit for duty.

In a November 14, 1995 report, Dr. Bradley C. Diner, who is Board-certified in psychiatry and neurology, diagnosed delusions disorder, paranoid type and narcissistic personality traits which he advised had "grown out of the strong loss and sadness associated with his wife's death." Dr. Diner concluded that appellant was not capable of fulfilling the responsibilities of his job and recommended ongoing psychiatric treatment. An employing establishment fitness-for-duty report, dated November 21, 1995, indicated that appellant was not fit for duty. In a January 26, 1996 report, Dr. Perry Taaca, an employing establishment physician, provided the following justification for this decision: the nature of appellant's illness was chronic and recurrent; he suffered a similar disabling episode approximately two years previously; he did not maintain medically prescribed active follow-up treatment for the previous episode; information available revealed that he lacked insight into his illness and lacked commitment to treatment; it was inferred from Dr. Diner's report that he does not foresee that appellant will be able to return to this type of employment. In an August 20, 1996 report, Dr. Richard A. Owings, who is Board-certified in psychiatry and neurology, advised that he initially saw appellant on April 25, 1996 with follow-up sessions on June 4 and August 15, 1996. He advised that, in mental status examination, appellant did not express any ideas that were inherently delusional, that is obviously contradictory or in conflict with well-

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ Appellant also submitted a June 10, 1996 report from Thomas G. Burks, L.C.S.W. The Board notes, however, that a report from a licensed clinical social worker is not medical evidence, as it is not the report of a "physician" as defined in section 8101(2) of the Federal Employees' Compensation Act. Such a report has no probative value on the question of appellant's mental competence. *Frederick C. Smith*, 48 ECAB 132 (1996).

known facts such as believing he had superhuman powers. Regarding the allegations concerning Ms. Palmer, Dr. Owings advised that there were two ways of interpreting the facts: that appellant was the victim of peculiar behavior on the part of his neighbors in Ohio and Arkansas; or that he suffered from a delusional disorder. Dr. Owings concluded that the latter was true, stating:

“From this it must be inferred that [appellant] suffers from a delusional disorder. That is, he has a delusional and paranoid belief that he is being persecuted by Ms. Palmer and others in Ohio and that this conspiracy has extended to Arkansas and continues up until date. He has no insight into these delusions. There is danger that he will act on his delusional beliefs in what he would consider defensive actions against his persecutors. I must leave to the wisdom of the court [to determine] whether or not the events in 1993 are as reported by the investigators or are as reported by [appellant]. If he is in fact the blameless victim of other people’s persecution, then I would deem him fit for duty. On the other hand, if events are as reported by the investigators in 1993, then I must conclude he suffers from a delusional disorder and as such cannot be reliably entrusted to use a firearm safely or to function in a law enforcement capacity as a postal inspector.”

Douglas A. Stevens, Ph.D., a clinical psychologist, who conducted a clinical evaluation on appellant that day and reviewed medical reports brought to him by appellant, provided a February 25, 1997 report.

In an April 30, 1997 report, Dr. Stevens stated:

“This is a difficult situation, for under the FECA, there should be some type of diagnosed dysfunction that arises out of and in the course of, his employment. However, the preponderance of the evidence shows that he does not have a disorder and that he was placed under unusual and unnecessary stress by his supervisors, in what seems to be a thinly veiled attempt to force him out of his position. Certainly, this man did experience distress associated with the loss of his wife, dealt with it appropriately and recovered. The stress that he has experienced is job-related stress. After some problems had arisen, it was certainly within the purview of his employers to ask him to take a fitness-for-duty examination, relative to promoting job efficiency. However, when two reports came back from the Isaac Ray Center stating that all was within normal limits, it became obvious harassment when they continued to force him to take other fitness-for-duty examinations. Given these continued unnecessary evaluations, his resentment and frustration increased. Then he was subjected to ongoing harassment and investigation, feeling as if he was in a fish bowl and every action was being observed, without him being ‘mirandized.’ From all of the records, it certainly appears that he was specifically singled out for this treatment. He reported to me that his supervisor, Mr. Bain, told him that someone in Washington had it in for him. All of the experiences he had, following his first fitness-for-duty evaluation, resulted in marked work-related stress, though not any

psychopathology.... This is a difficult diagnostic issue as it does not represent psychopathology. Certainly, there is an atypical job-related stress reaction precipitated by the actions of his supervisors. He does not meet a DSM-4 diagnostic category under Axis I. In the DSM-4 diagnostic formulations, the only one that would be significant would be Axis IV, reflecting severe stress during the last year. He now has developed a very significant aversion to going back in the 'boiling pot,' this being a rather realistic reaction. Therefore, it cannot be referred to as a simple phobia, as it is not an unrealistic but rather a very realistic one.”

Regarding appellant’s allegations, as a general rule, a claimant’s reaction to administrative or personnel matters fall outside the scope of coverage of the Act.⁵ Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.⁸

The Board has held that investigations are administrative functions of the employing establishment, that do not involve an employee’s regular or specially assigned duties and are not considered to be employment factors.⁹ Likewise, disputes over leave are generally a personnel matter unrelated to a claimant’s assigned duties,¹⁰ and the requirement for physical examinations is an administrative function of the employer.¹¹ Furthermore, a performance appraisal is an administrative action of the employing establishment and is not compensable absent a showing of error or abuse by the employing establishment.¹²

An employee’s complaints about the manner in which supervisors perform supervisory duties or the manner, in which a supervisor exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.¹³ In determining whether the employing

⁵ See *Janet I. Jones*, 47 ECAB 345 (1996).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ See *Barbara J. Nicholson*, 45 ECAB 843 (1994).

⁹ See *Ruth S. Johnson*, *supra* note 7.

¹⁰ See *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹¹ See generally *Alice M. Washington*, 46 ECAB 382 (1994).

¹² See *Sammy N. Cash*, 46 ECAB 419 (1995).

¹³ *Daniel B. Arroyo*, 48 ECAB 204 (1996).

establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁴ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.¹⁵

In this case, while appellant established two factors of employment -- that he was required to transfer narcotics as evidence for a trial in his personal automobile without his credentials or weapon and that he was required to attend a hearing without his case file, the Board finds this remaining contentions without merit. The employing establishment provided a clear explanation regarding the reason for the investigation and finding appellant unfit for duty. Even though appellant established compensable factors of employment, he did not meet his burden of proof to establish that his emotional condition was work related because he did not submit rationalized medical evidence explaining how these factors caused or aggravated his emotional condition. By letter dated April 5, 1996, the Office informed him of the type of medical evidence necessary to establish his claim, which was to include a comprehensive medical report from his physician. Dr. Diner advised that appellant's condition was caused by the death of his wife. Dr. Owings advised that appellant's delusional and paranoid belief was due to his feeling that he was being persecuted by neighbors in Ohio and Arkansas. Dr. Ross did not provide a cause of appellant's condition. While Dr. Stevens diagnosed an atypical stress reaction that was employment related, it did not appear that his opinion was based upon a complete and accurate history. Furthermore, it did not contain a rationalized explanation as to how appellant's condition was caused by the accepted employment factors.¹⁶ Thus, appellant failed to meet his burden of proof.

¹⁴ *Ruth S. Johnson, supra* note 7.

¹⁵ *See Barbara J. Nicholson, supra* note 8.

¹⁶ *See Jerry D. Osterman, 46 ECAB 500 (1995).*

The decision of the Office of Workers' Compensation Programs dated August 26, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 6, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member