U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFRY R. PRICE and U.S. POSTAL SERVICE,
POST OFFICE, Rocky Mount, VA

Docket No. 98-1601; Submitted on the Record;
Issued March 17, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On July 16, 1996 appellant, then a 43-year-old customer service supervisor, filed a notice of occupational disease and claim for compensation alleging that he suffered from major depression with high anxiety and stress due to conditions of his employment. Appellant stopped work on June 18, 1996 and has not returned.

In a statement attached to his CA-2 claim form, appellant alleged that he sustained an emotional condition after being given a "Letter of Warning" concerning his job performance, an official discussion regarding his usage of leave, a poor performance evaluation and harassment by the postmaster. Appellant alleged that Paul Sandberg, the postmaster, told him that he was not suited to supervise because appellant mishandled a leave request from Mark Wagner on April 4, 1995. Mr. Sandberg also refused to hear appellant's version of the events surrounding the leave request. Appellant alleged that the "Letter of Warning" was eventually removed but that it was again issued against him during his merit evaluation in May 1996; in a letter dated May 21, 1996, Vernon E. Jolley informed appellant that Cheryl Alls agreed to remove the "Letter of Warning" from his file.

Appellant further alleged that during this time he had to take family medical leave to give primary care to his son who had Down syndrome, diabetes and a thyroid deficiency; appellant received an "official discussion" on the use of family medical leave from Teresa Navrrette. Appellant felt that the discussion was prompted by Mr. Sandberg and was retaliatory because appellant had filed a workers' compensation claim in April 1995. Appellant described feeling intimidated by Mr. Sandberg; he alleged that the "official discussion" was unfairly placed on his record and that he should not have received a poor performance rating on May 29, 1996.

Appellant further related that Mr. Wagner had improperly discussed his evaluation with appellant's coworkers, informing them that appellant was to receive a poor rating and that he was going to be written up for excessive absences from work on May 29, 1996.

In an "EAS Merit Pay Evaluation" report for fiscal year 1995, Mr. Sandberg criticized appellant's job performance and gave him an unacceptable rating. In a "Letter of Warning" dated June 22, 1995, appellant was charged with unacceptable performance. He was advised that future deficiencies could result in more severe action including suspensions, reduction in grade/pay or removal. The charge read as follows:

> "On April 4, 1995, Letter Carrier Wagner advised [appellant] he need to be on sick leave on April 5, 1995 to recuperate from treatment to his shoulder. [Appellant] advised Carrier Wagner to a call a replacement part-time flexible carrier to cover for him on April 5. Carrier Wagner stated to [appellant] that he did not feel he should make the call to the replacement carrier, but [appellant] stated [he was] to busy with stamp stock to make the call. On April 5, 1995, Carrier Wagner reported for duty as scheduled, but advised the postmaster of his conversation with [appellant]. [Appellant's] actions and failure to accept [his] responsibility for staffing exposed the Postal Service to liability in view of Carrier Wagner's physical limitations with his shoulder. In addition, the postmaster was in the office on April 4, 1995 and [appellant] failed to make him aware of the need to find a replacement for Carrier Wagner."

Appellant submitted an undated letter from a fellow employee named "Patty" who advised that Mr. Sandberg had spoken unfavorably of appellant in front of her and had told her that appellant was going to receive a poor rating.

By letter dated September 11, 1996, the employing establishment submitted a statement from Mr. Sandberg wherein he acknowledged that appellant was verbally counseled regarding excessive absences and poor work performance and that appellant was issued a "Letter of Warning." Mr. Sandberg further acknowledged that he may have discussed appellant's evaluation with other employees.

In a decision dated December 12, 1996, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish that appellant's emotional condition was sustained in the performance of duty.

By letter dated December 3, 1997, appellant filed a request for reconsideration along with new evidence.

Appellant submitted additional evidence including the following: a copy of a joint statement on violence and behavior in the workplace issued by the employing establishment; a notice from citizens of Franklin County dated March 3, 1997, regarding complaints of mail handling; an unsigned letter of complaint dated May 5, 1997 from employees of Rocky Mount postal office addressed to the employing establishment; a statement from a postal employee indicating that the workers who prepared the letter of complaint refused to sign it for fear of retaliation; a November 7, 1997 notice indicating that appellant was no longer eligible for health

insurance; a December 4, 1997 statement from Patricia Handy describing a violent interaction between Mr. Sandberg and Mr. Wagner; a memorandum from Mr. Sandberg to appellant advising him that he was not permitted to set his own work schedule; a medical certification form indicating that appellant was required to care for his son; a copy of the June 22, 1995 "Letter of Warning;" and e-mails from appellant requesting leave.

In a sworn statement dated November 2, 1995, "[Mark]" Wagner stated that he had been able to work on April 4, 1995 and that Mr. Sandberg had directed him to provide a statement of his conversation with appellant on April 4, 1995.

In an Equal Employment Opportunity Commission investigative affidavit dated October 18, 1996, Ms. Navrrette, acting manger of consumer affairs at the employing establishment, stated that appellant had worked for her approximately eight months, during which time he had many unscheduled absences from work. She noted that appellant's wife had died about a year prior, that appellant was a single parent and that his son had both mental and physical disabilities. According to Ms. Navrrette, although she suspected that most of appellant's absences were covered under the family medical leave, she had been concerned that appellant made no attempt to substantiate his absences with medical documentation which prompted her to have an "official discussion" with him about use of family medical leave. She denied that Mr. Sandberg had influenced her decision to speak with appellant.

In a December 3, 1997 decision, the Office denied modification following a merit review.

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

Workers' compensation law is not applicable 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. 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.[1] On the other hand, there are situations when an injury has some connection with the 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.[2]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[3] If a claimant does implicate a factor of

[1] 5 U.S.C §§ 8101-8193.

[2] *Joel Parker, Sr.*, 43 ECAB 220.

[3] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

employment, then the Office should determine whether the evidence of record substantiates the factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[4]

In the instant case, appellant specifically attributes his emotional condition to a "Letter of Warning" regarding deficiencies in his performance of supervisory duties, an "office discussion" regarding unscheduled absences from work and use of family medical leave, which went on his permanent record; a poor performance evaluation and the postmaster's discussions regarding appellant with other employees.

Appellant is not alleging that his emotional condition was caused by the performance of his regular work duties, but rather that his emotional condition was caused by administrative actions taken by his supervisor. The Board has held that allegations which relate to administrative or personnel matters rather than to appellant's regular or specially assigned work duties do not fall within the coverage of the Act.[5] Although the handling of disciplinary actions, evaluations, leave requests and other similar actions are generally related to employment, they are administrative functions of the employer and not duties of the employee. However, the Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[6]

The Board has reviewed the record and finds that actions of Mr. Sandberg in issuing appellant a "Letter of Warning" and requesting a statement from Mr. Wagner regarding the April 4, 1995 incident do not rise to the level of abuse or error on behalf of the employing establishment in the administration of a personnel matter. Mr. Sandberg's concerns that appellant required Mr. Wagner, an injured employee, come into work or find his own replacement, appear legitimate given the information he was provided by Mr. Wagner at that time. While Mr. Wagner provided further detail concerning the events of April 5, 1995, in his sworn statement of November 1995, which may have modified the actions taken by Mr. Sandberg in June 1995, and in fact the personnel action taken against appellant was modified, the mere fact personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.[7]

Similarly, to the extent that appellant is dissatisfied with his job performance rating and attributes his emotional condition to reprimands he received for use of leave, appellant has cited only administrative matters and has not alleged a compensable factor of employment. To support a finding that an employee was subject to improper treatment by his or her superiors, there must be evidence that error or abuse, in fact, occurred. The evidence of record, however,

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[4] *Id*.

[5] *Mary L. Brooks,* 46 ECAB 266 (1994).

[6] *Id.*

[7] *Mary L. Brooks*, *supra* note 5; *Michael Thomas Plante*, 44 ECAB 510 (1993).

does substantiate a finding that appellant did in fact have excessive leave usage. Finally, Mr. Sandberg's comments regarding appellant made to other employees are not substantiated by the evidence of record with sufficient detail to establish that this rose to the level of error or abuse. Mere perceptions of harassment or discrimination are not compensable under the Act.[8] Because appellant has not submitted any substantiating evidence of harassment by Mr. Sandberg the Board finds that the Office properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation dated December 3, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 17, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] *Elizabeth Pinero*, 46 ECAB 123 (1994); *Mary A. Sisneros*, 46 ECAB 155 (1994).